

# PUNJAB CUSTOMARY LAW.

VOLUME II.

## STATEMENTS OF CUSTOMARY LAW IN DIFFERENT DISTRICTS

(EXTRACTED CHIEFLY FROM THE SETTLEMENT REPORTS).

~~LAW AND POLICE~~

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## P R E F A C E .

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THE compilation comprised in this Volume is intended to further several objects. In the first place, I hope it will prove useful to Settlement Officers when engaged on the Tribal Records of Custom, which are now always prepared at settlement. There will be some advantage in an accessible and condensed account of procedure and results in other districts; and a comparison of the various statements made cannot fail to direct attention to those points which call for special care in investigation.

Secondly, the work of Messrs. Boulnois and Rattigan has laid before the Courts and the public an account of the Customary Law of the Province, as it appears when viewed through the medium of the judicial decisions of the Chief Court. But, concurrently with judicial enquiries, executive measures, with a tendency to lend a somewhat different complexion to the whole question, have for many years directly aimed at ascertaining and recording the customary law of the people. A summary, therefore, of executive enquiries hitherto conducted may be acceptable to persons interested in the study of primitive institutions, as a supplement to the information which is already available from judicial sources.

Thirdly, I think the data contained in this book, when taken with information given in Volume III, in the Law Reports, and in the work of Messrs. Boulnois and Rattigan already alluded to, suffice as the basis of a general, though necessarily tentative, theory of Punjab Customary Law. I shall, at least, attempt to state in the Introduction below what I conceive to be the fundamental principles of the subject, and to trace, so far as I can, their interconnection.

It must not, however, be supposed that these pages offer any exhaustive analysis of provincial customary rules. On the contrary, the notes and abstracts refer only to seventeen out of the thirty-two districts of the province; and many of the papers included in the collection are of a very fragmentary character, nor is the value of the different extracts at all equal. All this, however, is a necessary consequence of the conditions of the task. It is only since 1865 that Tribal Records have been framed at settlement. Even where such records exist, the Settlement Officers have not always stated the substance of them in their reports; and the time at my disposal has not allowed me to supply this omission, except for the Siálkot District, and that of Dera Gházi Khan, the omission in the case of the latter district being made for the purpose of giving me the opportunity to prepare a memorandum on the Codes, which I had translated. Accordingly, with these exceptions, where the Settlement Officer has provided a digest, more or less full, of the Customary Law of his district, this has been incorporated. In some cases I have drawn from the Settlement Reports, either prior in date to the present system of investigating Customary Law, or containing no complete account of its results, such memoranda as I was able to put together on points usually treated in the Tribal Codes. Other districts are altogether omitted. The Introduction is entirely my work. Of the rest, part is so far original that it consists of notes of my own. Part is merely a series of excerpts from already-published Settlement Reports. The residue comprises papers by Messrs. Wilson, Roe, Thorburn and Tucker, now submitted to Government for the first time.

Why so many districts are omitted will appear from a brief review of the existing state of the case. In the Delhi Division, the Tribal Record, or "*Riváj-ám*," has been completed in the Gurgaon District only. The able epitome by Mr. Wilson is the first Section in this Volume. The Delhi and Karnál Districts are still under settlement; and I have been

informed by the Settlement Officers that their Tribal Records may be ready in the course of a few months. Sirsa and Hissár, having been settled before the dates of Mr. Prinsep's Circulars of 1865-66, have no "*Riváj-áms*" at present. The Sirsa District is now again under settlement; and a Tribal Record will form part of the operations, which have not long begun. For the remaining district of the Hissár Division, Rohtak, we have the memorandum by Pandit Maharáj Kishn, which will be found in Section II. The remark made regarding Sirsa and Hissár applies also to all districts of the Umballa Division. For Simla, I possess a brief paper drawn up by the reader in the Deputy Commissioner's Court; but the inquiry on which it was based was of too summary a character to justify its publication. Ludhiána is already under settlement. Umballa may soon be so. Two of the districts of the Jullundur Division,—Hoshiarpur and Jullundur,—are being settled; for the third, Kangra, I have made copious extracts from Mr. J. B. Lyall's Report. Tribal Statements exist for all three districts of the Amritsar Division. These were made during the course of Mr. Prinsep's operations, but there is no translation, save in the case of the Siálkot District; and the translation here being in a somewhat tedious and unreadable form, I have, as stated above, given an abridged account of its general purport. In the Lahore Division, "*Riváj-áms*" had been finished by 1872 for the Lahore and Gujránwala Districts. They have not been abstracted or translated, but I have taken some notes from the Settlement Reports. There is no "*Riváj-ám*" for Ferozepore generally; though there is such a paper for the Muktsar Tahsíl, which, however, has not been translated or abstracted. The Ráwalpindi, Jhelum and Shahpur Settlements were conducted at a time when the information now comprised in the Tribal Records was inserted in the Village Administration Paper. I have noted such particulars as appear in the Settlement Reports. The Gujrat Codes were analysed by Lieutenant-Colonel Waterfield; and his analysis is included

in the collection. Such account as Mr. Purser gave of the Montgomery “*Riváj-ám*” is also inserted. The Jhang and Muzaffargarh Districts are still under settlement; and Tribal Records either exist in the vernacular, or are under preparation. For Mooltan there is a full memorandum by Mr. Roe. In all the Frontier Districts, except Kohát, the “*Riváj-áms*” have been completed and the Settlement Officers’ abstracts have been utilised. Kohát is still under settlement; and it may be presumed that the final report will include the usual details of usage. Briefly, there are eleven districts,—Gurgaon, Rohtak, Kangra, Sialkot, Gujrat, Mooltan, Dera Ismail Khan, Dera Ghazi Khan, Bannu, Peshawar, and Hazara,—for which Tribal Records have been both framed and abstracted. There are two districts (Amritsar and Gurdaspur), and a part of a third (Ferozepore), for which there are Tribal Records, but no translations or abstracts. Three districts,—Lahore, Montgomery and Gujranwala,—possess Tribal Records, but no systematic epitomes. There are thirteen districts for which both codes and abstracts may be expected at no very distant dates, settlement operations being already current, or likely before long to begin. These are Delhi, Karnal, Sirsa, Umballa, Ludhiana, Simla, Jullundur, Hoshiarpur, Rawalpindi, Jhelum, Jhang, Muzaffargarh and Kohat. There remain the Hissar and Shahpur Districts; the settlement of the former expires in 1883, and of the latter in 1881. Probably the settlements of Rawalpindi, Umballa and Simla will not all be taken up at the same time. The portion of the Ferozepore District, exclusive of Muktsar and Mamdot, is due for settlement in 1884.

Notwithstanding, therefore, the imperfect character of the present compilation, there is good reason to believe that, in the course of a few years more, the undertaking begun sixteen years ago will have been nearly completed. For almost every district of the province we shall have a vernacular account of the popular customs. If His Honour the Lieutenant-Governor desires to continue this series hereafter, a

fresh volume of similar epitomes of tribal customs might be edited and brought out so soon as sufficient material shall have been provided by the Settlement Department.

As both in this Volume and the next, I venture occasionally to express my personal opinion on certain points of Customary Law, I think I ought to state what have been my opportunities for coming to any conclusions on the subject. In 1871 and 1872 I served in the Lahore District; and for about nine months I was entirely alone amongst the people at the Kasúr outpost. I then worked as Assistant Settlement Officer in the frontier district of Dera Ghazi Khan from the beginning of 1873 till May 1874. Towards the end of that year I was on special duty for two months, engaged with Customary Law. From January to August 1875, I was in charge of the Rohtak Settlement. Both in the Dera Ghazi Khan and in the Rohtak District I was much in camp. All the rest of my service of  $8\frac{1}{2}$  years has been passed either in the Punjab Secretariat or in that of the Government of India. Under these circumstances, I in no way rely upon my personal observations. My experience of District and Settlement work is far too limited to warrant any confidence in any belief I may entertain which is unsupported by evidence. The method I have followed is that which alone by training and practice I am fitted to adopt. I have collated the available information gathered by local and judicial enquiry, and have arrived at such results as I am able to state, by comparison of the records framed by other officers. My work has been done like any other piece of Secretariat work, and will, no doubt, be found to display the defects characteristically incidental to Secretariat processes. I may, however, say that my narrow district experience, such as it is, accords with the views I venture to advance on the strength of reports made by the Settlement Department and that, as I have always done what is called 'Revenue' work in the Secretariat, and have, therefore, had constant occasion to study carefully a great number of papers be-

on proprietary right and rural customs and institutions, my every-day employment has contributed very much to the possibility of my editing this series.

Such being the case, it is almost superfluous to clearly and expressly declare in the language of the letter of the Government of India of 13th March 1873, printed in Volume I, that nothing in this Volume or in Volume III has the force of law; and that nothing in any part of my compilations can "by itself be taken or quoted as authoritative proof of the existence of any custom, which itself must be established by independent evidence or some valid precedent." The work can "only serve as a guide to officers looking for prevailing customs."

C. L. T.

*July 1880.*

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APPENDIX.

## ERRATA.

Page 14, line 24 from top, for "division" read "divisions."  
 „ 21, „ 14 from bottom, after "times" insert "for."  
 „ 29, „ 14 from top, for "4" read "14."  
 „ 30, „ 19 „ for "familes" read "families."  
 „ 32, „ 3 from bottom, for "corps." read "crops."  
 „ 38, „ 6 „ for "for" read "from."  
 „ 54, „ 2 „ for "Primitve" read "Primitive."  
 „ 56, „ 19 „ for "their" read "there."  
 „ 56, „ 9 „ for "12" read "110."  
 „ 62, „ 16 from top, for "Note" read "Notes."  
 „ 70, „ 7 „ after "1803" insert " ; it" dele i.  
 „ 87, „ 3 „ after "proper" insert "to."  
 „ 88, „ 19 „ after "land" insert "and."  
 „ 90 „ 2 from bottom, for "never" read "newer."  
 „ 92, „ 19 „ for "shall" read "should."  
 „ 94, „ 16 from top, for "cænogamous" read "cænogamous."  
 „ 109, margin, for "Class" read "Classes."  
 „ 122, line 21 from bottom, for "imtermarry" read "intermarry."  
 „ 122 „ 10 „ for "irreversively" read "irreversibly."  
 „ 137, „ 19 from top, for "obominable" read "abominable."  
 „ 138, „ 25 „ for "regad" read "regard."  
 „ 166, „ 8 from bottom, for "perform" read "perform."  
 „ 167, „ 21 from top, for "We" read ~~He.~~  
 „ 168, „ 19 from bottom, for "ANCESTRAL" read "ANCESTOR."  
 „ 170, first line, for "HEIRSAFTER" read "HEIRS AFTER."  
 „ 175, para. 8, margin, for "of" read "to."  
 „ 183, line 4 from bottom, for "case" read "cases."  
 „ 186, „ 24 from top, for "eual" read "equal."  
 „ 186, last line, for "aswill" read "as will."  
 „ 187, line 25 from bottom, for "hubasnd's" read "husband's."  
 „ 189, „ 19 „ for "brothor" read "brother."  
 „ 190, „ 21 „ for "seprate" read "separate."  
 „ 191, „ 7 „ after "had" insert "had."  
 „ 191, „ 3 „ for "polyandryis" read "polyandry is."  
 „ 196, „ 8 from top, for "chandardálna" read "chadarálna."  
 „ 203, „ 19 „ for "entitied" read "entitled."  
 „ 207, „ 3 from bottom, for "country" read "contrary."  
 „ 210, „ 12 from top, for "1t6h" read "16th."  
 „ 211, „ 18 from bottom, for "abviate" read "obviate."

Page 217, line 2 from bottom, *for "had" read "has."*

- „ 222, „ 23 from top, *for "contributious" read "contributions."*
- „ 224, „ 2 from bottom, *for "anothr" read "another."*
- „ 225, „ 5 from top, *for "share" read "shares."*
- „ 227, „ 7 „, *for "rght tore deem" read "right to redeem."*
- „ 233, para. 602, margin, *for "daughters" read "daughters."*
- „ 236, line 21 from bottom, *for "patriæ" read "patria."*
- „ 242, „ 23 „, *for "bnilding" read "building."*
- „ 242, last line, *for "109" read "207."*
- „ 251, line 14 from bottom, *after "awarded" add "to."*
- „ 255, „ 9 „, *for "son" read "sons."*
- „ 261, „ 15 from bottom, *for "coparcenar" read "coparcener."*
- „ 261, „ 14 „, *for "coparcenars" read "coparceners.*
- „ 262, „ 6 „, *ditto ditto.*
- „ 271, „ 6 „, *for "daugters" read "daughters."*
- „ 277, „ 14 from top, *after "this" insert "is."*
- „ 282, „ 10 „, *for "river" read "rivers."*

# PUNJAB CUSTOMARY LAW.

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## INTRODUCTION.

### I.—THE TRIBE AND THE VILLAGE.

“THE collective ownership of the soil by groups of men, either in fact united by blood-relationship, or believing, or assuming, that they are so united, is now entitled to take rank as an ascertained primitive phenomenon, once universally characterising those communities of mankind between whose civilisation and our own there is any distinct connection or analogy.” This remark is made on the first page of Sir Henry Maine’s *Lectures on the Early History of Institutions*; and it would be accepted by M. Emile de Lavaleye, between whom and Sir Henry Maine there are important differences of opinion. “It is only,” says M. de Lavaleye, “after a series of progressive evolutions and at a comparatively recent period, that individual ownership, as applied to land, is constituted.”\*

The Punjab affords a conspicuous instance of the general truth of the theory implied in these observations. It may, I think, be safely asserted that, except where title has originated in direct grant by the State or Rajah, as in Kángrá, or in the action of Sikh governors, as in Mooltán, or, after tribes have settled down, by mere squatting or improvements, there is abundant evidence that collective property, either of the tribe or clan or of the village, preceded several ownership. In many places the irruptions of particular tribes, or the turbulent conquests of those Sikh fighting corporations known as “*misl*,” have super-imposed rights originating in simple violence on subjugated cultivating communities; but if we penetrate below the confused aspect of the surface, as it was left at the expiry of Sikh dominion, and endeavour to seize the principle on which the mass of the population gravitated into its present shape, then, subject to

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\* Primitive Property, p. 3.

the exceptions just made, we find in every district that joint property still often resides in communities larger than mere families ; and that, even where family rights have succeeded to those of the commune, clear traces of communal property frequently, perhaps invariably, survive. The revenue terms with which we are most familiar, *zamindári*, *pattidári*, *bhaiachára*, themselves epitomise the history of landed property in this part of India. The land is first held in common, and then on ancestral or customary shares ; later, these are undistinguished or forgotten, or deliberately set aside, and possession becomes the measure of right, or, in other words, sevralty is fully established.

As I must frequently employ these vernacular expressions, I repeat here the well-known explanation of them. Each one of them marks a stage in the process of transition, though the first is also used in other senses in different parts of India. An 'estate' in Punjab revenue phraseology is a village or other local area with which a separate settlement of the land revenue is or may be made. A *zamindári* estate is held either by individuals or families, or by proprietary cultivating communities paying the revenue in common. It is thus either 'landlord' or 'communal ;' and undivided proprietary right is its distinguishing characteristic. Putting aside the tenures of the landlord type, other *zamindári* tenures are best described in the language of an old Regulation of 1814. They are "joint estates," \* \* \* "where all the sharers have a common right and interest in the whole of the estate, without any separate title to distinct lands forming part of the estate." In the *pattidári* tenure, disintegration has begun ; but the communal origin of property still regulates its distribution and the chief public duty connected with it. The lands are divided and held separately ; but they are divided on shares based either on personal descent or on the proportions of the once common stock which particular families have either held from the outset or appropriated by prescription. The land and revenue are, therefore, said to be divided upon ancestral or customary shares, subject to succession by the law of inheritance. In a pure *bhaiachára* estate shares have become quite extinct ; a certain defined extent of land is in the possession of each proprietor ; and neither in fact nor in theory is the holding part of a common stock. The degree of separation in interest is thus the basis of the classification, but the classification is not by any means an exhaustive one, because the most numerous class

f villages is that which presents features common both to the *pattidári* and the *bhaiachára* estate. Lands are held partly in severalty and partly in common ; and the measure of right in common land is either the amount of the share or the extent of land held in severalty. Such tenures are known as mixed or imperfect *pattidári* or *bhaiachára*; and out of 38,145 estates in the Province, 17,215 belong to this category. There are 3,295 *zamindári* village communities, 3,652 divided upon ancestral or customary shares, and 9,542 in which possession is the measure of right in all lands ; and the residue is made up of *zamindári* 'landlord' estates, held by individuals or families, and tenures originating in grant, lease, sale, or other agreement on the part of the British Government.

These tenures are distributed all over the country. There is not a single district which does not exhibit examples of more than one of the four classes, taking the mixed class as the fourth ; and out of 32 districts there are only 5 which do not show instances of all of them. Even in these cases it is doubtful whether the omission is not sometimes due to defective classification in the returns. In all the 5 districts I refer to \* there are 'mixed' villages ; and in all of them, except Simla, there are also *zamindári* villages. The general diffusion of property, either still communal or once wearing that character, needs no further proof.

Severalty, therefore, being here, as elsewhere, derived from collective enjoyment, the question to which I shall attempt an answer is,—what are the steps whereby this transition has been brought about ? I will set side by side the materially different theories of Sir Henry Maine and M. Emile de Lavaleye ; and I shall then enquire how far the evidence I am able to adduce will enable us to determine which of the two accords best with the facts in this province.

M. de Lavaleye, agreeing with Mr. Freeman, regards the clan and the village community as identical. "Originally," he says, "the clan or village is the collective body owning the soil ; later on, it is the family."† In all nations, he believes, by a slow and universally similar evolution,‡ the commune and property were developed in the *mark* ; and the *mark* was the common domain of the clan. The notion of property in the soil begins to spring up under the pastoral system, but it is limited to a sense of common interest in the

\* Karnál, Ludhiána, Simla, Sháhpur, Kohát.

† "Primitive Property," p. 157.

‡ *Ibid.*, p. 69.

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‡ *Ibid.*, p. 69.

pasture lands of the tribe; individuals cannot claim a part of the soil as exclusively their own. When a portion of the land is put temporarily under cultivation, the territory which the tribe or clan occupies remains its undivided property.

"Subsequently the cultivated land is divided into parcels, which are distributed by lot among the several families, a mere temporary right of occupation being thus allowed to the individual. The soil still remains the collective property of the clan, to whom it returns from time to time that a new partition may be effected. This is the system still in force in the Russian commune, and was, in the time of Tacitus, that of the German tribe.

"By a new step of individualisation, the parcels remain in the hands of groups of patriarchal families dwelling in the same house, and working together for the benefit of the association, as in Italy or France in the middle ages, and in Servia at the present time.

"Finally, individual hereditary property appears. It is, however, still tied down by the thousand fetters of seigniorial rights *fidei-commissa*, *retraits lignagers*, hereditary leases, *Flurzwang*, or compulsory system of rotation, &c. It is not till after a last evolution, sometimes very long in taking effect, that it is definitely constituted and becomes the absolute, sovereign, personal right, which is defined by the Civil Code, and which alone is familiar to us in the present day."\*

For the present purpose, this extract is material up to the point where individual property appears. After that the development of rights in land is affected by political causes, and, therefore, necessarily varies in different countries. In the history of the Punjab, during the present century, there are many analogies to particular processes in that vast and complicated social transformation, which is known as the feudalisation of Europe. But these analogies form a separate subject upon which I am not prepared to enter at present. I shall, therefore, only quote so much of the theory of Sir Henry Maine as relates to the origin and subsequent history of the village community up to a similar stage; but as Sir Henry Maine alludes to the house community, I must first briefly describe the latter in M. de Lavaleye's words.

In general terms it is only a very large joint family. It forms—

"the basis of the agrarian organisation among all the Southern Slavs, from the banks of the Danube to beyond the Balkans. In Slavonia, in Croatia, in Servian Voivodia, in the military confines, in Servia, Bosnia, Bulgaria, Dalmatia, Herzegovina and Montenegro, the ancient institution presents itself with identical characteristics." \* \* \* \* "  
 "The social unit, the civil corporation, which owns the land, is the family community; that is to say, the group of descendants from a common

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\* "Primitive Property," p. 4.

ancestor dwelling in the same house or in the same enclosure, labouring in common and enjoying in common the produce of agricultural labour.” \* \* \* \* “ Each community consists of from ten to twenty persons. Some are found numbering as many as fifty or sixty, but these are exceptional. In Herzegovina there are generally from twenty to five-and-twenty persons.” Such a community is called “ by the Germans *Hauskommunion*, and by the Slavs themselves *druzina*, *druzvo* or *zadruza*,—words which have much the same meaning as ‘ association.’ The head of the family is called *gospodar*, *starchina* or *domatchin*. ”

He is elected by the members of the community, regulates its work, and manages its affairs.\*

My quotation from Sir Henry Maine is a long one; but the question it raises is so important in this province that I feel sure I shall be pardoned for making it:—

“ The naturally organised self-existing village community can no longer be claimed as an institution specially characteristic of the Aryan races. M. de Lavaleye, following Dutch authorities, has described these communities as they are found in Java; and M. Renan has described them among the obscurer semitic tribes in Northern Africa. But wherever they have been examined the extant examples of the group suggest the same theory of its origin; which Mr. Freeman (*Comparative Politics*, p. 103) has advanced concerning the Germanic Village Community or Mark. ‘ This lowest political unit was at first here (i. e., in England), as elsewhere, formed of men bound together by a tie of kindred, in its first estate natural, in a later stage either of kindred, natural or artificial.’ ”

“ The evidence, however, is now quite ample enough to furnish us with strong indications, not only of the mode in which these communities began, but of the mode in which they transformed themselves. The world, in fact, contains examples of cultivating groups in every stage, from that in which they are actually bodies of kinsmen to that in which the merest shadow of consanguinity survives; and the assemblage of cultivators is held together solely by the land which they till in common. The great steps in the scale of transition seem to me to be marked by the joint family of the Hindús, by the house community of the Southern Slavonians, and by the true village community, as it is found first in Russia and next in India. The group which I have placed at the head—the Hindú Joint Family—is really a body of kinsmen, the natural and adoptive descendants of a known ancestor. Although the modern law of India gives such facilities for its dissolution that it is one of the most unstable of social compounds, and rarely lasts beyond a couple of generations, still so long as it lasts it has a legal corporate existence, and exhibits in the most perfect state that community of proprietary enjoyment which has been so often observed, and (let me add) so often misconstrued, in cultivating societies of archaic type. ‘ According to the true notion of a joint undivided Hindú family,’ said the Privy Council, ‘ no member of the family, while it remains

undivided, can predicate of the joint undivided property that he, that particular member, has a certain definite share. \* \* \* The proceeds of undivided property must be brought, according to the theory, into the common chest or purse, and then dealt with according to the modes of enjoyment of the members of an undivided family.' (Per Lord Westbury, *Appovier v. Rama Subba Aiyan*, 11, Moore's Indian Appeals, 75.) While, however, these Hindú families, 'joint in food, worship and estate,' are constantly engaged in the cultivation of land, and dealing with its produce, 'according to the modes of enjoyment of an undivided family,' they are not village communities. They are only accidentally connected with the land, however extensive their landed property may be. What holds them together is not land, but consanguinity; and there is no reason why they should not occupy themselves, as indeed they frequently do, with trade or with the practice of a handicraft. The house community, which comes next in the order of development, has been examined by M. de Lavaleye (P. et s F. P., p. 201), and by Mr. Patterson ("Fortnightly Review," No. xliv), in Croatia, Dalmatia and Illyria,—countries which, though nearer to us than India, have still much in common with the parts of the East not brought completely under Muhammadan influences. But there is reason to believe that neither Roman law nor feudalism entirely crushed it even in Western Europe. It is a remarkable fact that assemblages of kinsmen, almost precisely the counterpart of the house communities surviving among the Sclavonians, were observed by M. Dupin, in 1840, in the French Department of the Niévre, and were able to satisfy him that even in 1500 they had been accounted ancient. These house communities seem to me to be simply the joint family of the Hindús, allowed to expand itself without hindrance, and settled for ages on the land. All the chief characteristics of the Hindú institutions are here,—the common home and common table, which are always in theory the centre of Hindú family life; the collective enjoyment of property, and its administration by an elected manager. Nevertheless, many instructive changes have begun which show how such a group modifies itself in time. The community is a community of kinsmen; but though the common ancestry is probably to a great extent real, the tradition has become weak enough to admit of considerable artificiality being introduced into the association, as it is found at any given moment, through the absorption of strangers from outside. Meantime the land tends to become the true basis of the group. It is recognised as of pre-eminent importance to its vitality, and it remains common property, while private ownership is allowed to show itself in moveables and cattle. In the true village community the common dwelling and common table, which belong alike to the joint family and to the house community, are no longer to be found. The village itself is an assemblage of houses, contained indeed within narrow limits, but composed of separate dwellings, each jealously guarded from the intrusion of a neighbour. The village lands are no longer the collective property of the community; the arable lands have been divided between the various households; the pasture lands have been partially divided; only the waste remains in common. In comparing the two extant types of village community which have been longest examined by good

observers—the Russian and the Indian—we may be led to think that the traces left on usage and idea by the ancient collective enjoyment are faint, exactly in proportion to the decay of the theory of actual kinship among the co-villagers. The Russian peasants of the same village really believe, we are told, in their common ancestry; and accordingly we find that in Russia the arable lands of the village are periodically redistributed, and that the village artificer, even should he carry his tools to a distance, works for the profit of his co-villagers. In India, though the villagers are still a brotherhood, and though membership in the brotherhood separates a man from the world outside, it is very difficult to say in what the tie is conceived as consisting. Many palpable facts in the composition of the community are constantly inconsistent with the actual descent of the villagers from any one ancestor. Accordingly, private property in land has grown up, though its outlines are not always clear; the periodical redivision of the domain has become a mere tradition, or is only practised among the ruder portions of the race; and the results of the theoretical kinship are pretty much confined to the duty of submitting to common rules of cultivation and pasturage, of abstaining from sale or alienation without the consent of the co-villagers, and (according to some opinions) of refraining from imposing a rack-rent upon members of the same brotherhood. Thus the Indian village community is a body of men held together by the land which they occupy. The idea of common blood and descent has all but died out. A few steps more in the same course of development—and these the English law is actually hastening—will diffuse the familiar ideas of our own country and time throughout India; the village community will disappear, and landed property, in the full English sense, will come into existence.”\*

Now, it will be at once perceived that the successive order in which the several institutions referred to appear, as stated by M. de Lavaleye, is reversed by Sir Henry Maine. According to the former, we have first the tribe, then the clan settled on the land, which is the same thing as the village community, next the house community, and lastly individual property. But, according to Sir Henry Maine, the village community is derived from the house community; and the latter is an expansion of the joint family.† In the one case, the family is regarded as the primary unit, and observation is directed to its growth on the land. In the other, the tribe is the unit, and the history of property is the history of tribal disintegration.

Although conveniently expressed in general terms, I apprehend that neither theory is meant as absolutely exhaustive, or as rigidly applicable to every set of facts. It would be admitted that special forms of proprietary development

\* “Early History of Institutions,” pp. 77-82.

† See also *Ibid.*, pp. 112-13.

might be found in particular places, just as there are peculiar species in organic nature; and it would not be contended that every phase necessarily occurred in every series of events wherever several property had been evolved from collective ownership. Often one or another of the successive institutions might be rudimentary, or transitory, or altogether absent. Repartition, for example, might not always happen ; and the house community, if found at all, might be indistinguishable from the joint family, not like the village, forming the basis of rural society, but merely constituting a subordinate part of its structure.

There is no one more fully aware than Sir Henry Maine of the vast variety of tenures in India ; and whenever he speaks of the village community,\* it will always be understood that he "confines himself to fundamental points," and describes "a typical form to which village communities appear \* \* \* to approximate, rather than a model to which all existing groups called by the name can be exactly fitted." This being so, I have no hesitation in saying at once that the village community in the Punjab is not derived from the house community ; and that here it would convey a more correct general impression to speak of the joint family, except where it is an offshoot from an already existing village, or the fragment of a tribe, as the last term in the series and not the first. I am not prepared to say that there are no cases where the joint family is very numerous—probably such could be found. But, assuredly, the house community is not now, in this part of India, a prominent feature in the rural organisation as it is among the Southern Slavs ; and had it ever been the unit regulating proprietary enjoyment, it would have left traces in the village system. This, however, I cannot find that it has done ; and if we admit, for the purpose of the argument, that the house community has a definite place in the order of development, it may safely be asserted that there is an ellipsis in the Punjab of this particular phase. We may, I think, go even further than this and say that in this part of India the true analogy to the Slav house community lies in the *patti* or *taraf* of the village. Where the clan has broken up into sections within the village, and each of these holds still in common a part of the land formerly enjoyed by all jointly, or where the village has had a miscellaneous origin in the combination of offshoots of different stocks, there we have the transition between primitive joint-ownership and the owner-

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\* "Village Communities," p. 107.

ship of families joint as amongst themselves, but severed in interest from the rest of the village.

Moreover, the theory of Sir Henry Maine requires us to suppose that the land has supplanted kinship as the basis of the community. But in the Punjab this is very far from being the case. The idea of common blood and descent has by no means died out. Punjab peasants, no less than Russian peasants, believe in their common ancestry; and allowing always that adoption must be recognised as of equal strength with natural parentage, their belief frequently rests upon indisputable grounds. It is not difficult to say here in what the tie between the brotherhood is conceived as consisting. Unquestionably, as the name implies, it is conceived, except in the villages just mentioned, of miscellaneous origin, as consisting in the possession of a common ancestry,—an ancestry which may be traced either to a single family or to associate tribesmen, but has in either case transmitted the common blood. Even in *bhaiachára* villages it is descent which makes the main difference between the member of the community and the occupancy tenant or outsider. Wherever the obligations and privileges of proprietorship are regulated wholly or in part by ancestral shares—and we have already seen how exceedingly numerous these cases are—there kinship is asserting itself as the fundamental principle on which property is distributed. If details are needed, I find from the returns in the Annual Revenue Report for 1878-79 that, Simla alone excepted, there is no district in the province where descent does not come into play in numerous instances as fixing the form of tenure, either through the mechanism of the *zamíndári* village, or through that of ancestral or customary shares, or by both agencies.

Now if, in addition to this, I can succeed in raising a strong presumption that the village community has generally originated in the tribe, except where it has been founded by the interposition of Government, or is merely a colony of a parent village, I think it will be admitted that I am justified in contending that Sir Henry Maine's theory can only be regarded as applicable to the Punjab in a very limited sense. I propose, therefore, to bring forward the evidence which appears to me to establish this presumption; and I shall then go on to show that, when once the village community has come into existence, the progressive stages are its separation into defined lots still held jointly by groups claiming common descent amongst themselves, and next the division of the

land amongst joint families or individuals. This agrees generally with the theory of M. de Lavaleye, except that the partition amongst groups takes the place of the house community, from which the joint family is distinguished merely by being of a smaller size. I have included the case of individual ownership, but I might have stopped at the joint family, because, even in *bhaiachára* villages, joint-ownership as between a father and his sons, or a set of brothers, or brothers and cousins, or nephews and uncles, or any combinations of such near kin, is exceedingly frequent. This is the necessary consequence of the prevalent law of inheritance under which all the sons take equally, and of the general habit that near agnatic relations occupy at least the same village site, and often the same house or enclosure. I do not think that in this province the stage of absolutely separate property, vested only in individuals, would ever be generally attained, unless primogeniture were to become the general rule of succession, and of this there is no sign. The great periods in the history of landed property in the Punjab may be presumed to be not the joint family, the house community, and the village community in that order, but successively the tribe, the village, and the family. That is briefly and in general terms the proposition I shall endeavour to maintain; but I must not be understood to assert that the village was always a necessary term in the series; and I throughout admit that, once villages are established, joint families, or even individuals, emigrating therefrom, may found new communities.

It may be useful, as I shall have to mention a considerable number of districts, briefly to enumerate those of which the province is composed. There is, perhaps, no part of India of which the physical configuration can be more readily retained in the memory. The Punjab fills the north-west corner of India, where the Himalayan system splits up into the ranges of Afghanistan. The territory spreads far into the northern mountains, and at one point touches the confines of Thibet. In shape it is almost a triangle, one side being the boundary within the Himalayas and the other the Suleimán range on the west, whilst the conspicuous points in the base, which skirts the edge of the great desert, are the confluence of the Punjab rivers in the Indus and Delhi, the seat of the Moghal empire. Between the Indus and the Sutlej four rivers—the Jhelum, the Chenab, the Ravi, and the Beas—successively divide the country into tracts known as Doabs—a word which means exactly the same thing as Mesopotamia,

the region, that is, between two rivers. All these ~~rivers~~<sup>“rivers”</sup> finally merge in the Indus, and find their way by its channel to the sea. Somewhere near Karnál to the north, and slightly to the west of Delhi, there is an almost imperceptible rise of ground, which is the water parting between the Gangetic and Indus river systems. The Punjab is the basin of the Indus system, with an upper margin breaking into the Himalayas. The province is divided into ten commissionerships or divisions. The Pesháwar Division comprises Hazára, a long strip of frontier stretching into the hills past Kashmir, and the Afghan districts of Pesháwar and Kohát. The districts of the Deraját Division are Bannu, Dera Ismáil Khan and Dera Gházi Khan. This is a belt of country between the Suleimán range and the Indus, together with a portion of the generally barren plains that intervene between the Indus and the Sutlej as these rivers begin to converge. The Mooltán Division fills the southern point of the province, the country being of the same character as that of the Cis-Indus portion of the Deraját. The districts are Mooltán, Muzaffargarh, Jhang and Montgomery. Between the Indus and the Chenáb, north of the Cis-Indus Deraját and the Mooltán Division, is the Ráwalpindi Division, including Ráwalpindi, Sháhpur, Jhelum and Gujrát. Then come the Lahore, Amritsar and Jullundur Divisions, including the sub-Himalayan and fertile tract of the Central Punjab. In the first we have Gujránwála, Lahore and Ferozepore (which is, however, a Cis-Sutlej district); in the second, Siálkot, Gurdáspur and Amritsar; in the third, Hoshiárpur, Jullundur, and the altogether exceptional hill district of Kángra. East of the Sutlej the Hissár Division—Sirsa, Hissár and Rohtak—fringes Rájputána. The Delhi Division, which is more like Hindustan than the Punjab, is made up of Gurgaon, Delhi and Karnál. Simla is a separate district for obvious reasons, but it is too small to be considered specially in a survey like the present. Of this, with Lúdhiana and Umbálla, the Umbálla Division is constituted.

I have given this detail, because, in order to support a reasonable suggestion as to the origin of the Punjab village communities, it seems both legitimate and desirable to go to those parts of the province that have been most recently peopled, or which were least exposed to the full force of Sikh dominion. These are naturally the outlying tracts. On the frontier, except in Hazára, both conditions are fairly satisfied. In the Mooltán Division, Sirsa and Ferozepore,

colonisation is frequently recent; but the Sikh hold on Mool-tán was remarkably strong, and cultivation was greatly due to official direction or encouragement. Kángra has been inhabited, it is no exaggeration to say, for ages. Its remote position preserved intact till the days of British dominion a peculiar system, which is a study by itself and has been exhaustively described by Mr. Barnes and Mr. J. B. Lyall.

The observation of the Kángra tenures suggested to Mr. J. B. Lyall the explanation which the evidence I have taken at second-hand from the reports of other districts seems to me, with some slight modification, immaterial for present purposes, to confirm. In Kángra the Sikhs did not alter the tenure of land, though they considerably confused the old system of administration.\* The Sikhs succeeded to the rights of the Rajah, and the theory was that each Rajah was landlord of the whole of his “ráj” or principality, not merely in the degree in which everywhere in India the State is in one sense the landlord, but in a clearer and stronger degree. “Each principality was a single estate, divided for management into a certain number of circuits. These circuits were not themselves estates like the mouzahs (villages paying revenue to Government) of the plains; they were groupings of holdings under one collector of rents. The waste lands, great or small, were the Rajah’s waste; the arable lands were made up of the separate holdings of his tenants.” “All rights were supposed to come from the Rajah; several rights, such as holdings of land, &c., from his grant, and rights of common from his sufferance.”† After elaborating the description which I have abstracted in his words, Mr. Lyall continues:—

“26. It may be worth while to make a guess as to the original cause of the difference between the tenure of land in these hills and that existing in the plains of the Punjab. It may, perhaps, have to do with the ethnology of the country. There is an idea current in the hills that of the landholding castes, the Thakars, Ráthís, Kanets and Girths, are either indigenous to the hills, or of mixed race and indigenous by the half-blood, and that the Rájpúts, Bráhmans, Khatris, Játs and others are the descendants of invaders or settlers from the plains. It is commonly believed that the inhabitants of the plains are the descendants of tribes of Aryan race, who successively invaded India from the north-west. They came as settlers, and more or less completely expelled the aborigines from the tracts in which they settled, driving them back into the forests and mountains. It is easy to see how such a settlement by free tribes might result in a division of the country into

\* “Kangra Settlement Report,” 1872, p. 23.  
† *Ibid*, p. 25.

estates held by village-communities. I believe that this is how the plains of the Punjab were settled. As to the hills, I suppose that they remained to a much later date inhabited only by aboriginal tribes, and that eventually they were invaded, not by tribes of settlers driving back the old inhabitants, but by military adventurers subduing them, much in the way in which Ireland was first invaded from England. May not certain peculiarities which we see in the hills, such as the formation of petty principalities, the sole lordship of the chief, the customs of primogeniture in his family, the contempt of the plough and business of farming by Rajpûts and Brâhmans, be explained as the effect of such conquering invasions, and of the military order which the invaders would have to maintain in the constitution of their society in order to keep down a subject race?"

I do not think the tribes of the Punjab plains came all of them from the north-west. The evidence with which I am acquainted leads me to suppose that the Jâts, and probably most Rájpûts, came from the south and east. It will be noted that Mr. Lyall believes that the plains of the Punjab were settled by tribes, and that the country was divided into estates held by village communities. He also conveys the impression that the aboriginal tribes of the hills evolved several property under political influences, without the intermediate intervention of the village commune. He does not say this in express terms, but it is the inference his remarks suggest. I shall return to this point later on.

Meanwhile let us look to the frontier for confirmation of the theory that the country was settled by tribes which, where circumstances favoured this sort of development, severed into village communities.

In the Hazâra District the general result of the Sikh rule was "to destroy the old tenures of the country, and to substitute for them a system under which every one alike held his land at the will of the State, and on condition of his paying its full rent."\* Nevertheless, the landmarks of tribal ownership were not obliterated.

"Excepting† the Khánpur Ghakkars," says Major Wace, the Settlement Officer, "few of those who now own the soil can carry their title back beyond the beginning of the eighteenth century. Dhúnds and Karrâls, Pathâns and Jadúns, Tanaolis and Swáthis, were then all equally aggressors; the Dhúnds and Karrâls and others, in so far as they were emancipating themselves from the domination of their old lords, the rest as invaders, driving out or subordinating to them-

\* "Hazâra Settlement Report," 1874, p. 111.

† *Ibid.*, p. 109.

selves the weaker families whom they found in the country. The right thus asserted or acquired by the strong over the weak was popularly termed "wirásat" or "wirsa" (*Anglicé*, heritage), and its possessor was called the wáris (*Anglicé*, heir). In fact, as stated by Major J. Abbott in some notes left by him, the wáris was the last conqueror."

The old German law styled the inhabitants of a village *geerften*, inheritors; \* in the Saxon provinces of the Low Countries a share in the *mark* or whole territory of the tribe was called *whare*; and those who possessed *wharen* bore the name of *erfgenamen*, inheritors.† This is exactly *wárisan*. From among the tribes mentioned by Major Wace I take two for further illustration. It will be seen that the *iláka* is just the same thing as the *mark*.

" 60. The Jadún country consists mainly of four ilákas, Mángal, Nawashahr, Dhamtaur and Rajoia, situate in the centre of the district round the Abbottabad cantonment.

" The Jadúns claimed to hold their lands on a Pathán system with periodical redistributions (*waish*). But the Sikh rule so altered the actual status of possession that a *waish* attempted during the rebellion of 1846, as also one subsequently sanctioned by Major Abbott, were alike given up as impracticable.

" The Mángal iláka was the joint wirásat of the Mansúr and Hassazai division of the tribe; the Nawashahr iláka was the wirásat of the Mansúr division; the Dhamtaur iláka of the Hassazai division; and Rajoia iláka of the Salár division.

" The state of the Mángal iláka was so disturbed under Sikh rule that the old status of the property has been most entirely destroyed there, and several of the villages of the Mángal tract have fallen into the hands of a motley gathering of occupants of all classes. In the plain villages of the Nawashahr and Dhamtaur tracts the old status has been partly preserved, and so also in a few villages in Rajoia tract."\*      \*      \*

" 63. Excepting 38 villages of the Garhián tract, which form a part of the old Tanáwal country, the whole of this tahsil is reckoned the 'wirásat' of the Swáthi tribe.

" Omitting the Agror iláka, of which separate mention will be made further on, the total number of estates in the tahsil is 217.

" 64. A number of the villages in the Garhián and Mansehra tracts, and a few in the Shinkíári and Bairkund tracts, are owned by Awáns, Tanaolis and Gújars. The Awáns before Sikh rule were in the position of feudal retainers, paying no rent to the 'wáris' body, but fighting for them when required. The Tanaolis and the Gújars who own lands acquired their rights for the most part by prescription during Sikh rule.

" 65. The rich lands on each bank of the Siran river (in the Shinkíári and Bairkund tracts), the Konsh and Bhogarmang glens, and the Bálakot ilákas, are owned almost entirely by Swáthi communities. Here

\* " Primitive Property," Preface, p. xxxviii.

† *Ibid*, p. 282.

and there we find villages owned by Saiyads, of whom some, the descendants of Saiyad Jalál, had a share in the old Swáthi heritage, and others acquired their lands by serí grants from the Swáthi.”\*

Here we find villages on the lands of a tribe with the recollection of periodical redistribution still fresh, and Swáthi communities in the Swáthi *mark* or *wirásat*.

The next district is Pesháwar. The population is now made up mainly of Afghans of the Mohmand, Khalíl, Daudzai, Gigiáni, Muhammadzai, Mandan and Yusafzai tribes.† The Yusafzais, Gigiánis and Muhammadzais came to the Pesháwar plain about the fifteenth century; and the Khalíls, Mohmands and Daudzais in the middle of the sixteenth century.‡ The allotment of the country on tribal shares and the periodical redistributions are described in the extract given in Part II of Volume III.

“ The com nou interest of the whole tribe in their tribal allotment no longer exists, as it undoubtedly did when there was no settled government.§

“ 206. The land is called *daftár*, and is divided into lots or shares known as *brakhas*, or *bakhras* and *puchas* in Hashtnagar. These shares may be one piece of land. Sometimes they are situated in two or three places, but are often proportional shares in every *vand* (or division of land) within the village area.

In the irrigated part of the district the allotment of the land for a *brakha* or share depends on the water distribution, without which the land is of little value; but in Yusafzai, where the land is altogether dependent on rain, a *brakha* represents a proportional share in every description of land in the village—all alike possess a share of *good*, *medium* and *inferior* land.

“ 207. The villages are usually divided into *kandis* (sections), corresponding to the word *taraf* in the Punjab; and the *kandis* are again sometimes subdivided into *tals*. A *kandy* has usually its own mosque (*jamáit*) and *hujra*, or guest-house.

“ 208. The tenement of a family is termed *kandar*, and includes the house (*kor*) and the enclosure (*golai*).

“ 209. Every village has families of hereditary servants and artisans, such as the *gola* (weaver); the *kalál* (potter); the *lohár* (ironsmith); the *nandap* (cotton-cleaner); the *musalli* (sweeper and grave-digger), called also *shahi-khel*; the *nai* (barber); the *tarkan* (carpenter); the *kotwal* (village policeman); the *dúm* (musician or ballad-singer), called also *mirási* (or prince of singers); the *ímam* (or priest); the *ghulám*, or slave class; the *'darwáí* (village accountant); and the shopkeeper, the last two of whom are always Hindús.

\* “ Settlement Report,” 1874, pp., 151-3.

† “ Pesháwar Settlement Report,” 1876, p. 79.

‡ *Ibid*, pp. 34, 37.

§ *Ibid*, pp. 85-6.

" 210. The elders (*mishran*) and the maliks compose the *jirga* or village council: they are referred to on all questions of custom and matters affecting the village society.

" 211. The village servants usually receive small grants of land free of charge in consideration for their service. They only intermarry among themselves—for instance, weaver with weaver, *dúm* with *dúm*.

" 212. I have not been able to trace their origin; they are now only known by the trade they carry on; they can give no tribe or section to which they belong or have belonged.

" Many of them are descendants of village servants said to have come down with the Afghans at their first settlement.

" It is possible some may be descendants of people first conquered by the Afghans."

This is a good illustration of the transformation of the tribe into villages of the usual type; but it may be thought that the example is vitiated by the suggestion that the Afghans brought the village servants down with them. They must therefore, it may be urged, have been organised in villages elsewhere. The objection is, however, not material for the purposes of my argument. Whatever their previous condition, the tribes, after they came to the Peshawar plain, certainly held their property in common, because they redistributed it in tribal shares; and village communities have now succeeded tribal ownership.

There is as yet no final report of the regular settlement in Kohát; but moving southwards along the border we come to Bannu. I quote from the unpublished report\* of Mr. Thorburn :—

" 17. Before going into details I shall give a general account of the The order of descent series of Afghan immigrations into this district, of Afghan tribes. quoting in part from the second chapter of my 'Bannu; or, Our Afghan Frontier.'

" The order of descent was as follows :—

" (1) The Bannuchis, who about five hundred years ago displaced two small tribes of Mángals and Haunís, of whom little is known, as well as a settlement of Khataks, from the then marshy but fertile country on either bank of the Kuram.

" (2) The Niázais, who some hundred and fifty years later spread from Tank over the plain now called Marwat, then sparsely inhabited by pastoral Játs.

" (3) The Marwats, a younger branch of the same tribe, who within one hundred years of the Niázai colonisation of Marwat, followed in their wake, and drove them farther eastward into the countries now known as Isa Khel and Miánwáli, the former of which the Niázais occupied, after expelling the Awáns they found there, and reducing the miscellaneous Ját inhabitants to quasi-serfdom.

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\* "Bannu Settlement Report," 1879, p. 15.

"(4) Lastly, the Darvesh Khel Wazírs, whose appearance in the northern parts of the valley as permanent occupants is comparatively recent, dating only from the close of last century, and who had succeeded in wresting large tracts of pasture lands from the Khataks and Bannuchis, and had even cast covetous eyes on the outlying lands of the Marwats, when the advent of British rule put a final stop to their encroachments.

"18. The first to settle were thus the Bannudzais or Bannuchis. The Bannuchis. Their previous home had been in the mountains now held by the Darvesh Khel Wazírs, with headquarters in Shawál. Sweeping down thence, they soon conquered the country lying between the Kuram and Tochi rivers, and once firmly established devoted themselves to agricultural pursuits. Their subsequent expansion was small, and only extended to their present possessions on the left bank of the Kuram. Weak Khatak communities were already settled there, but were gradually supplanted by the more numerous Bannuchis, whose pressure was irresistible. As soon as their conquests were secured to them, the new colonists seem to have parcelled out the country in a loose way amongst themselves, each group of families receiving once for all the share to which it was entitled by ancestral right. I give this prominence, otherwise it might be supposed they first held by the *vesh*, or communal tenure of the Marwats."

Later on\* Mr. Thorburn speaks of the "walled villages and united front" of the Bannuchis when alluding to their conflicts in the beginning of the present century with the Darvesh Khel Wazírs. And in describing their present tenures, he says†:—

"128. Bannuchi communities are divided into a large number of sections and sub-sections, each known by a common patronymic. The majority of the members Land-tenures in Bannu proper. of each are still settled in the same locality as they were generations ago, and are still interdependent in some material way mostly with relation to their canal irrigation system. The traditional accounts of the Bannuchis respecting the original division of the country amongst themselves upon ancestral shares, and the sub-sectional apportionment of land and water within the limits of each main share in proportion to the amount of canal excavation work done, are consequently in all probability true. No periodical *vesh* ever seems to have been customary amongst the Bannuchis, except in the Hawed village. In some few families, however, an occasional exchange of plots or repartition is made."

In the old estates, except in a few villages, it is now difficult to trace back any sort of measure of proprietary right to the third generation. But the estates "of the Nár and Landidák tracts being of recent formation, are still mostly what is technically termed *zamīndári* of the communal or landlord type, or *pattidári*."

\* "Bannu Settlement Report," 1879, p. 19.

† *Ibid.*, p. 123.

Of the Niázai and Ját villages of Isakhel, Mr. Thorburn reports :—\*

‘The Trag, Kánjú Kalú and Bhut Játs are all said to have been first settled about Tank, and to have come with the Niázais *via* Marwat into Isakhel. On the partition of the country they were given land and settled down as separate communities. Both they and the Niázais divided their estates amongst themselves by lot on ancestral shares. Although the usual causes, and especially the power of Ahmad Khan and his successors, have reduced many of the Játs to the position of occupancy tenants or inferior proprietors, this division on shares is still easily traceable in their villages. It is also so in Kamar Musháni. Sultankhel, a large village north-west of Trag, seems to have been finally settled only four generations ago by squatting. To the south, amongst the powerful Isakhel Niázais, *tals*, *darras* and *lichhes* are still known, and to some extent followed. The first word may be translated as the allotment of a clan, the second as that of a group of families in the clan, and the third as a single share in such an allotment. But amongst the Isakhels, as with the Játs, the strength and ambition of Ahmad Khan and his successors, now represented by the ‘Khwánín,’ have done much to obliterate ancestral right, and shares are not acted on except where a *tal* is still held undivided, or in cases where the clan receives a fixed rent from the cultivators of the soil, *e. g.*, Kundal and Atak Paniála.’

As regards the Marwats, the description of their periodical repartition is alluded to in Volume III. It occurs in thirteen *villages*.

There remain the most recent settlers, the Darvesh Khel Wazírs. Of these it is said :—

“Once a clan squatted and felt the necessity of a partition, each group of families obtained an allotment proportionate to its ancestral or customary share, and each such group in turn made a similar partition amongst its members. No type of *resh* tenure seems ever to have been customary amongst the Wazírs as a tribe. But in particular families a practice still obtains of repeated temporary partitions, the whole holding being redivided at each according to ancestral or other known shares.”†

He then remarks on the plots held by the eight different sections of the tribe; and it appears from what he says that individual right has sometimes sprung up within the section, derived either from squatting or from the amount of canal excavation work done by each household or from individual seizure. For the last process there was an interesting euphemism. It was called “purchase,” because the fiction of sale was invented some time after seizure, in order to save the honour of the weaker side, and enable spoiler and despoiled to live together in amity.

\* “Bannu Settlement Report,” 1879, p. 135.

† *Ibid.*, p. 124.

The next district in the Deraját is that of Dera Ismáil Khan.

The Bhitanni circle in this district was colonised during the last fifty or sixty years almost exclusively by Bhitannis, who form six-sevenths of the population. The Bhitannis live in small villages, generally hidden away in hollows, and, as will presently be seen, not of the true Punjab type at all :—\*

"Their houses are mud and brushwood hovels of the poorest description. Sometimes they live in caves hollowed out of the rock." \* \*

"255. The Bhitanni tribe is divided into three sections,—*Dhanna*,

Sections of the tribe. *Tatta* and *Wraspún*. The *Dhannas* have the best Their location in the of the hill lands. They own the Ghabbar and most hills.

of the Khaisara lands, having acquired the latter by purchase from the *Wraspúns*. The *Tattas* hold Saraghan, Jandola and Kot Khirgi. The *Wraspúns* have Band Wraspún. In the plains

In the plains, Divi- the lands of the Bhitanni circle were originally sions into *nallahs*. divided into numerous small divisions known as

*nallahs*. Each *nallah*, as a rule, forms a single plot, and is owned in perfect or imperfect *bhaiachára* by a number of families generally closely connected by birth. Up to the present settle-

Formation of mouzahs. ment each *nallah* was shown in the *khám tahsil* (revenue collected in kind) accounts as a separate mouzah.

As, however, many of them are exceedingly small, and most of them have no separate village site, it was found more convenient at the present settlement to group them into three large mouzahs (revenue-paying estates) based on the great tribal divisions of the clan. This was readily effected, as the lands of the *nallahs* belonging to the different sections almost invariably lie together. The new

Tenure on which the plain lands are held. mouzahs were named after these sections,—*Tatta*, *Dhanna* and *Wraspún*. The *nallahs* included in

each mouzah possess clearly marked boundaries of their own. The waste land in each *nallah* is the property of the *nallah* proprietors. There are no lands held in *shámilát* (common ownership) by all the *nallahs* of a mouzah. Before land became valuable, the proprietors of the different *nallahs* used readily to admit men of their own sub-sections to a share in the *nallah* lands ; and in this way men who had before lived exclusively in the hills were continually settling down in the plains. This state of things has now come to an end, and the present holders are not likely to associate even near relations for the future without a *quid pro quo*. There has never been, therefore, any actual division of the country on shares. The present proprietors hold purely on a squatting tenure."

The *vesh* or periodical redistribution amongst the Kundis is mentioned in Section I of Part II, Volume III. The tenures in the Kundi tract, as fixed during the recent settlement, are based on possession, or, in revenue phrase, are

\* "Dera Ismáil Khan Settlement Report," 1879, pp. 132-4.

ordinary *bhaiachára*.\* The waste lands are generally held on shares proportioned to the amount of revenue paid by the several proprietors.

The Gundapus settled about the beginning of the seventeenth century.† As will be seen by reference to the section on *Vesh*, the whole lands of the tribe were originally held by six sections, jointly subject to a periodical partition. It will be observed that in part of their territory large villages are still held in common by the whole tribe in 36,000 shares.

The Bábars are said to have settled in the district about the same time as the Gundapus.‡ Amongst them—

“ proprietary rights in land and water are entirely separate.§ The water is held independently of the land, and on quite a different set of shares; and a man may be an extensive water proprietor without owning an acre.

“ 319. The Bábar tribe is divided into two main divisions, Mahsands and Ghorakhels. The Mahsands are divided into four sections, and the Ghorakhels into eight sections, which, in accordance with the water division, are spoken of as *bulies* and *nimakkas*, or half *bulies*. The Mahsands and Ghorakhels each get a half-share in the Chandwán Kálápáni. This the Mahsands divide equally between their four *bulies*, and the Ghorakhels between their eight *nimakkas*. For irrigation purposes the Ghorakhel *nimakkas* are grouped together by twos so as to form *bulies* of the same size as those of the Mahsands. This association is not permanent, and now and again the *nimakkas* change partners. Eight equal *bulies* are thus formed, each of which takes its water in a separate stream. Inside the *bulies* and *nimakkas* the account is kept in rupees, annas and tats; but the value of these shares varies in each *buli* as the water is divided on a larger or smaller number of rupees.”

“ 320. The lands of the tribe are held by the same *bulies* and *nimakkas* as the water, but not on the same symmetrical shares. Rights in the land are based on an old *khula vesh* (division by heads). The whole Bábar country is now held on Rs. 1,271 shares or *khulas*. The number of *khulas* held by the different *bulies* and *nimakkas* varies considerably, and in no way corresponds with the shares that they hold in the water. The land proprietors are grouped into *gundies* consisting of two or three families, generally closely related. In each *buli* and *nimakka* there are several *gundies*. The number of *khulas* in a *gundi* varies greatly. The Bábar lands have all been partitioned. Each *buli* now holds its lands separately, scattered about in large lots all over the country. Some of these lots have been sub-divided among the sub-sections or *gundies*; others are held in common. As a rule, the same proprietary shares run through all the lots owned by a *gundi*; but occasionally the uniformity has been broken by exchanges made by the proprietors with a view to consolidating their property.”

\* “ Dera Ismáil Khan Settlement Report,” 1879, p. 142.

† *Ibid.*, p. 145.

‡ *Ibid.*, p. 166.

§ *Ibid.*, p. 167.

The Ushtaráñas are a Pathán tribe, who were all pastoral till about a century ago—\*

“ 330. The Ushtaráñas originally divided their lands in large blocks between their two main sections, the Ahmedzais and the Gaggalzais. These again sub-divided; and owing to subsequent transfers the old *patti-dári* form of tenure has disappeared. The main features of the original partition, however, can still be traced, for though the holdings of the sections are now to some extent mixed up, the bulk of the land is still held by the sections to which it was originally allotted. The tenure is now pure *bhaiachára*, each proprietor owning his own fields in severalty, though these, owing to the original manner of partition, are scattered all over the circle.”†

The district on the extreme south of the Punjab frontier is Dera Gházi Khan. Belooch supremacy there dates from the close of the fifteenth century.‡ The original inhabitants were probably Hindú Játs. I take the following passages from Mr. Fryer’s Settlement Report:—

“ 215. The origin of proprietary right in this district is somewhat peculiar. It was never sufficient for a man merely to occupy a piece of land. It was also necessary that a certain amount of capital or labour should be expended on the laud. In the Pachád tract there were embankments to be made to intercept the hill streams: and in the Sind tracts the colonists had to sink a well, or else to join with others in cutting a canal from the river. Lands, even up to the present day, may be acquired by reclamation and by the expenditure of capital in sinking a well. The acquisition of proprietary right by the first method is now unusual, and mostly gives only an occupancy right; but lands are frequently acquired by a man with sufficient capital to sink a well, and thereby obtain the ownership of half the lands irrigated by the well.

“ 216. There are no village communities in the district. Every village is made up of separate and independent landowners bound together by no common interest in the land, but only associated together for revenue purposes, and in former times mutual protection. Where the custom of *vaish* prevails it does not extend to whole villages. In the Pachád, where all the lands belong to members of the same tribe, it might have been expected that we should find common interests in the land; but, even in the Pachád, nothing of the kind exists, except in some villages in Sangarh, where the custom of *vaish*, or periodical transfers of land prevails. The lands of each village are said to have been parcelled out to the members of the tribe by the tumandár when the tribe first settled in the plains. Each member of the tribe has held his lands ever since in complete independence.”

I think the entire absence of the village community is

\* “Dera Ismáil Khan Settlement Report,” 1879, p. 171.

† *Ibid.* p. 173.

‡ “Settlement Report,” 1875, pp. 32-34.

rather too broadly stated. The returns show 49 proprietary communities paying revenue in common out of 749 estates; and making all allowance for the effect of the settlement, it seems unlikely that there were no true *zamindári* villages before it took place. The fact remains that in 206 estates possession is the measure of right in all lands. Again, when it is said that each member of the tribe holds his lands in complete independence, it must not be understood that joint property, as between a few relations, not as between large groups, is uncommon. On the contrary, premising that a "well" means an irrigable plot of land, whether or no a well be actually sunk in it, and a "band," a field banked round to hold the water of hill torrents, I find it said\* that—

"the partition of wells and bands is not very common in this district. Out of 13,727 well estates, 12,210 are held in common and only 1,517 divided.

"Most Sind villages," *i. e.*, in the tracts near the Indus, are "mere collections of wells grouped together for revenue purposes, but not really in any way knit together. The tenure is thus *bhaiachára*. Wells and bands are often very minutely sub-divided into shares or 'sams' for the purpose of computing the measure of proprietary rights. Each well is supposed to consist of eight bullocks. A man owns one leg or more of a bullock, or one bullock, or one yoke of bullocks in a well. Sixty-four shares can be easily reckoned in this way. When the number of shares exceeds sixty-four, the shares are expressed in 'sams' and in fractions of 'sams.'"

It has now, I think, been shown by a sufficient induction that where there has been comparatively recent immigration by tribes in a body, it is usual for the tribe first to hold its *iláka* or *mark* jointly, and that tribes thus at first enjoying land in common do, as a matter of fact, afterwards crystallise into villages of the familiar description.

But there is another inference which is suggested by these extracts, and this is that it is by no means safe to assert that the fully organised village commune must always have appeared as part of the process before the establishment of severalty, at least in groups as small as families consisting of a few relations. The expenditure of labour in improvements, mere squatting, and appropriation in arms,—all seem to be circumstances which may give rise to severalty within the tribe before it has partially lost cohesion as such by breaking up into village communities. This at least is the

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\* "Dera Gházi Khan Settlement Report," 1875, p. 75.

conclusion suggested by the evidence from the Deraját. To explain why this should be so, I will revert to the Kángra report by Mr. Lyall. I mentioned that he appeared to imply that the aboriginal tribes had settled without forming regular villages of the normal communal type. He goes on to say as regards the difference between the tenures in the hills and the plains :—

“ But perhaps the physical difference between a flat and a mountainous country will of itself account for” it.

“ In a flat defenceless country like the plains of the Punjab men naturally congregated in large villages for mutual protection. The houses being built wall to wall each village was a castle. The land nearest the village was cultivated, the rest remained waste. The men of each village foirmed in a degree a political unit. Village fought with village, and hence an idea of village boundaries and village lordship over the wastes might naturally arise. In the hills, on the contrary, the broken nature of the country prevented the formation of large villages like those in the plains. The houses had to be scattered here and there so as to be near enough to the patches of culturable land. No single hamlet was strong enough to stand by itself, so all had to put themselves for protection under some territorial chief, and to unite under his leadership to defend themselves against outsiders. Hence might arise the idea of the sole lordship of the chief, the absence of village boundaries in the waste, and the theory that all the waste was the property of the chief.”\*

Now, where you have abundance of waste land so that there is room for all the sections of a large tribe to spread over a considerable area in the plains, and the sections are not at war with each other, you have conditions almost equally favourable to the growth of several rights without the intermediate evolution of the village community as within the village itself. There is on this hypothesis peace over the land due to subjection to a tribal leader. Much has been written about the stability of village communities amid the crash of empires; but there is the other point of view, that the downfall or absence of political authority, whether monarchical or tribal, actually fosters the strength of the village commune as such. Its roots, perhaps, strike their firmest grasp, and its stock grows with its greatest vigour in the soil of anarchy and private war. It does not follow that the commune is unsuited to more peaceful times: on the contrary, in days of settled government such as our own, it is admitted to possess striking advantages. But there is much to suggest that any exceptional strength of the corporation and unusual degree of union amongst its

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\* “ Kangra Settlement Report,” 1872, p. 26.

members may often be directly due, like the endurance of the Arab character, to the dangers of its environment. The Karnál district was the battlefield of Northern India, and up to recent times it was ravaged by ruthless conquerors and plundered by merciless banditti. The sanguinary turbulence which preceded annexation is known by a household word—the *Rám Raula*. The people were pillaged by Sikhs and Mahrattas, or by rival Sikhs. When the country was annexed in 1803, four-fifths of the Karnál sub-division was overrun by forest, and its inhabitants found to have been either removed or exterminated. The Rájpúts of this part of the district were concentrated in a few large villages, ditched, walled and fortified. Watchers on towers and trees scanned the plain to give warning of danger. For years these villagers had paid nought to any man save under force, and had been subject to no rule: for years feuds had been continuous and forays had alternated with armed defence: “for years the highest law they had known had been the will of the village,—their most familiar implement \* \* \* the sword.”\* They had been unprotected by the inaccessibility of a mountain home, and had not in themselves the powerful principle of resistance to invasion which is implied in tribal leadership. No wonder their villages were strongholds, as indeed the Punjab village usually is when seen in its most perfect form. The Bannuchis of the Deraját had walled villages when, at the beginning of this century, they resisted the Darvesh Khel Wazírs. Conversely, where the full cohesion of a tribe under a chieftain obviates the necessity for village defence, there is no reason why severalty should not sometimes appear without the intermediate existence of the commune.

So far I have dealt mainly with the outlying districts of the province, and it may be said that Kángra is exceptional, and the frontier well known as the territory of tribes, so that no inference from either the one or the other can be drawn as to the development of property in the Punjab proper. It is something, I think, to have shown what the facts are when tribal settlement has actually happened within memory. For the rest it will suffice if in the parts of the Punjab plains which have been long inhabited I prove that there are traces of a former condition of property which can either only be explained on the hypothesis of tribal ownership, or which will at least be colourably elucidated

\* “Karnál Assessment Report,” 1878, p. 85.

by that explanation. But before I turn to the central divisions, I have a few words to say on the Southern Punjab and Sháhpur, the great region of virgin wastes, the pasturages of still nomad tribes.

In the Multán District, away from the rivers, each settler has obtained his grant direct from the State, sunk his well, and erected his homestead on it; but "in the tracts near the rivers the lands generally belong to Ját tribes, and here we find regular village communities, some of which still hold their land in common, whilst others have divided it and in most cases lost all trace of the original shares."\*

In the Montgomery District† there are a good many tribes that do not practise agriculture to any extent. Amongst these are the Kharráls, Siáls and Joyás. The Wattús are partly pastoral, but the part of the tribe on the Sutlej has taken of late years to agriculture, and many of them cannot now be distinguished from peaceful agricultural villagers, such as the Araiens or Khokhars. In this district—

"besides regular villages the district contains *ruhnás*, or permanent encamping grounds, which deserve a few remarks. The encamping grounds are scattered all over the vast space which intervenes between the cultivation on the banks of the Ravi and that on the Sutlej. They generally consist of a large circle of sheds, which form the habitation of the cattle herds of the pastoral tribes during a large portion of the year. The centre is occupied at nights by the herds, and generally contains a narrow and deep well from which water can only be obtained with much labour and apparently in very insufficient quantities. The immense herds of cattle which roam about the centre of both the Bari and the Reehna Doab remain in the vicinity of these *ruhnás* from the commencement of the rains till the end of February. On the approach of the hot season the scanty herbage of these tracts becomes generally insufficient for their support, and they are driven down to the banks of the rivers, where the vegetation, which covers the lands thrown up by the floods of the previous year affords them ample pasture till the commencement of the next rainy season. The word *ruhná* is applied to permanent encamping grounds, to which the herdsmen regularly resort every season, and which are known by the names of the tribes to whom they have belonged for generations. Temporary stations for a single season are called *buhnees*; and when the herd is chiefly composed of camels, the encampment is known by the name of *jhok*."‡

This passage naturally suggests the possibility of a village growing up out of a permanent encamping ground. I am not aware that any village has in fact so originated; but if

\* "Multán Settlement Report," unpublished quoted in Part II, Section I, of Volume III.

† "Montgomery Settlement Report," 1874, pp. 44-7.

‡ "Gugera Settlement Report," para. 56, quoted in "Montgomery Settlement Report," 1874, p 55.

so, this would be a case of a village forming itself out of a tribe. Probably the Jhang settlement now in progress may throw some light on the question. The description quoted would apply in a great measure to the central country of Multán.

The agricultural population of the Sháhpur District is almost entirely made up of Muhammadan tribes, of which the chief are the Gonduls, Ranjhas, Jhummuts, Mekuns, Tiwásas, Janjúas, Khokhars, Awáns and Beloches.\* Of these, the Gonduls, Jhummuts, Mekuns and Tiwásas, claiming a common Rájpút descent, immigrated within the last six hundred years.† The Gonduls occupy the central portion of the Bhera Tahsil,‡ and are a pastoral people. The Jhummuts and Mekuns are found in great numbers through the Sháhpur Tahsil. The Tiwásas, inhabiting a fairly defined tract, are half-pastoral, half-agricultural. "Their traditions tell how that after their first migration to the banks of the Indus they returned under their leaders and successively founded the villages of Oklí Mohlan," and four others.§ The Ranjhas are chiefly agriculturists. The Janjúas were once masters of nearly the whole of the Salt range, but "they have been reduced by the aggressions of the Awáns," whose immigration was probably quite recent, "to the occupancy of a few villages, mostly situated at the foot of these hills." The Khokhars are split up into innumerable sections. The Beloches are of the race that inhabits the Dera Gházi Khan District.

The agriculturists are settled in villages of the usual kind; and throughout the tracts of which Colonel Davies made the settlement, the prevailing tenure was *bhaiachára*, the extent of possession being the measure of each man's right. Pedigree tables were drawn out;|| "but it was found that although the genealogies of the village communities were well known, and there were often *tarafs* and *pattis*, or as they are called, *vurhees*, yet these had not been acted on for several generations. Possession in no way corresponded with shares, and the lands of proprietors of one nominal division were often found mixed up with those of another." The *taraf* or *patti* is the definite sub-division of a village, which I have compared to the house community of the Slavs. Why it was

\* "Sháhpur Settlement Report," 1866, p. 26.

† *Ibid.* p. 27.

‡ Sub-division of a district for revenue purposes.

§ "Sháhpur Settlement Report," 1866, pp. 27-8.

|| "Sháhpur Settlement Report," 1866, pp. 105-6.

that descent no longer principally regulated property, though it must still have affected the village organisation, may be partly explained by the history of the country. "On the dissolution of the Moghal empire anarchy for a long time prevailed, during which the country became the theatre of incessant fighting of tribe with tribe, varied by the incursions of the Afghans. To this succeeded the *grinding* rule of the Sikhs, when, as has been very truly remarked, 'the tendency was rather to abandon rights, symbols more of misery than of benefit, than to contend for their exact definition and enjoyment.'"

I shall now, leaving behind the frontier the Southern Punjab and Sháhpur, pass rapidly along the base of the Himalaya through the richest, most densely populated, and longest inhabited districts. These, however, will not be reached at once, for the west of the Ráwlpindi Division is more like the frontier than the central territory between the Indus and the Sutlej, which constitutes the Punjab proper.

In the Ráwlpindi District the Sikhs as usual did not take the proprietorship of land into account at all. They simply looked to their revenue. The result was, in the eastern part of the district "indescribable confusion in the tenures." But "in the western portion of the district parts, namely, of the tahsils of Futteh Jung and Attock and the whole of Pindi Gheb, Sikh rule was established later, and was never so fully developed. Some tribes, it is true, as the Tarkheylis, were sub-divided, driven to their Gundgurh fastnesses, and dispossessed of all their rights in this district; but others, the Khutturs, Ghebas and Jodrehs, for example, retained their *chuharooms*,\* and managed their estates more or less directly."† In this part of the district, therefore, the rights of property were found to be better defined and the proprietary bodies in much greater force. Now Chach is in the Attock Tahsil, and therefore in the portion of the district referred to. Each village was there divided into a number of shares known as *paos*; and in two villages the custom of periodical redistribution had obtained, but had been abandoned before the regular settlement reported in 1864.‡

In many *pattidári* and *bhaiachára* villages throughout the district "there are large sub-divisions called *tarafs*.

\* This was a Sikh assignment of a fourth part of the income from, or land-revenue assessed on, certain lands.

† Settlement Report, 1864, p. 117-18.

‡ See paper on Periodical Redistribution, Part II, Section I, Vol. III.

These may be divided off entirely or not, and within the *tarafs* there are a number of *pattis*. These properties are called *pattidári tarafwár*, and are very numerous. Each *taraf* or *patti* is named after an ancestor of the present occupants. In *bhaiachára* villages *tarafs* and *pattis* are generally formed by different classes, such as the Gungal, Khingur, Zamindars, and the Gukkhurs, Sahoos,"\* or gentry. Zamin-dar here means an ordinary agriculturist.

It may be remarked on this description that I am far from contending that villages have always split up into *pattis* and *tarafs* in the course of attaining severalty, or that *pattis* and *tarafs* have no origin but the separation of the branches from a common stock of kindred. All I maintain is that if we must point to any intermediate stage, such stage is here the *taraf*, not the house community.

The Jhelum District to the east of Ráwlpindi supplies particularly good evidence of the frequent identity between the village and a section of a clan or tribe. We also see here one way in which villages may originate after tribes have settled on the land. The tribe may be watched breaking up into villages, and the village disseminating the germs of fresh village colonisation.

" 64. The villages along the banks of the Jhelum, around Pind Dádan Khan, were taken from the Janjúas by certain *quasi-Rájpút* tribes, known as Jalubs and Khokhars. The Ját cultivators (Khoti, Metla, &c.,) now became subordinate to the Jalubs, who soon broke up into the circles (or zillabs as they are there called) of Dehrialia, Pinnumwal and Harunpur. These again were divided into various villages called *chuks*, as each member of the family separated off. \* \* \*

" 95. It is the custom all over the country for the Gukkhurs and other superior tribes to live in a large central village with all the village servants, while the Ját cultivators build small hamlets of from 1 to 20 houses all around. This is partly on account of the large area of these estates, many fields being five and even ten miles from the main village, and partly for the sake of the manure of the cattle; it is also necessary to watch the fields at night to protect them from the wild boars and deer. These hamlets are called *dhoks*, and sometimes *chuks*, and there are sometimes as many as 30 or 40 in a large estate, but some are mere farmhouses; some, however, are large villages.

" 96. A great number of the smaller estates in the district have been formed from these hamlets, and are still called *dhok* or *chuk*. The Sikh Kardar allowed his agent one rupee a village per harvest, which induced the agent to give many of these *dhoks* a separate place in his register; besides, the jagirdars found that by making them independ-

\* Settlement Report, p. 168.

† Jhelum Settlement Report, 1864.

ent of the superior proprietors they were able to get more out of them. These villages are generally still called dhok so-and-so, or chuk so-and-so, after the head cultivator, or are known by the name of a caste, such as Ranjhe, Ghoogh, &c. Original villages are always called by some definite name; but a hamlet made into a new village would, for instance, be called the Ranjhe Basti, and gradually Ranjhe only. Where a village is called by the name of a caste only, it is almost certain that it was founded by some other person in the waste lands of his own village.

" 159. The column for the total area shows some villages which are small counties. As they are *bond fide* single estates held by one joint and undivided proprietary body, their size is really very grand.

" Lawa contains over 90,000 acres, exclusive of the great Lawa rakh, and extends for 4 miles by 16. Thoha has nearly 50,000, and is 10 miles by 12. Kundwal again stretches for 9 miles, and contains 35,000 acres. The village of Lilla is split up into four parts, which are now independent; but it is really one village, all living close together and being descendants of a common ancestor; it contains 22,000 acres, and extends 5 miles by 9. Pind Dádan Khan again paid till lately Rs. 7,000. There are 34 villages, each with above 10,000 acres; and 152 villages pay over Rs. 1,000 yearly assessment. One iláka of 12 villages pays Rs. 20,000 annually."

The village of Lilla is obviously a case of tribal ownership. People of common descent, holding as cultivators an area 9 miles by 5 in extent, are in themselves at least a small tribe, whether or no they be a sub-division of a larger one.

The evidence of tribal organisation preceding and accompanying village settlement is particularly full and clear in the next district, Gujrát, as in Jhelum, for the reason that it is just in this part of the Punjab that we have the transition between the frontier tribe as the predominating social phenomenon, and the village community as the most obvious social unit.

I quote from the Settlement Report of 1860 :—

" 51. A map will be found in the Appendix (No. XII), showing the locality of each clan. It will be seen that, generally speaking, all the more powerful clans possess unbroken tracts of country. Besides these separate clan locales, there are two grand divisions of the Doab, the 'Jatatar' comprising the east and south; the 'Gújar' on the west. These divisions are marked on the map by a red dotted line. Where the boundary was fixed is now but vaguely known. But although (as will be seen to be the case) occupancy for several generations may have existed of a Gújar community in the Jatadar, or of Játs in the Gújar, either party still maintains the proprietary right (maliki) for its own class up to the boundary. The country up to the west of the Pabbi range is excepted from the above divisions. It forms a portion of a similar division, termed 'Chibhal,' claimed and inhabited chiefly

by the Chib clan, and situated for the most part to the north of the district, in the Jammu territory."

### The Jâts and Gújars are—

"58. \* \* \* sub-divided into a great number of families, each called by its own name, which is generally that of some ancestor, who became in his time so powerful, or otherwise noted, as to leave his name to his posterity. It would not appear, however, that any new divisions have been separated off from the main stock for the last 100 or 120 years. During this period there would seem to have been no giants, and the various clans have been content to reverence and abide by the distinguishing denominations derived from their ancestors prior to that time. It is probable also that after the Muhammadan time no Musalmán zamindar was allowed to become so prominent as to warrant his setting himself up as the founder of a clan. It was then the Hindûs' turn to become distinguished and found families; and, accordingly, we have the numerous Sikh clan divisions of Sundânwala, Alowala, Atâriwala, Châchi, &c., &c., which however, unlike the Musalmáns, seem to have derived their names not so much from persons as from places and things. Most of the clans number but few families, sometimes owning but a single village. But to this there are some notable exceptions among the Jâts. The Varaich, Tárur and Gondul clans are very strong and hold a superior status."

The Sikh divisions mentioned are not true clans. They were martial families amongst the founders of the chivalrous, though grasping, aristocracy which dominated the country, and only yielded before annexation to the genius of Ranjít Singh.

But the Chibs were in old times a complete specimen of full tribal organisation :—

"67. Like Rájpûts generally, until their independence was overthrown by Maharaja Ranjít Singh, the Chibs disdained to carry on agricultural pursuits. In this respect now, however, they are on a par with Jâts and others. While independent the clan divided itself into four major and six minor divisions. The former were termed Mandis; the latter Dheris. The head of each Mandi enjoyed the honourable title of Rae. The chiefs of the Dheris were called Thukkers. The Raes ruled over 22 villages, the Thukkers over 12, and all were subject to the head of the clan, who held, as now, the rank of Rajah. These distinctive appellations of Rae and Thukker have long ceased to be made use of. The families in which the titles were formerly hereditary are known, but they retain none of their old influence beyond their own villages."

In a later section of the report\* it is said that joint responsibility for the revenue was a novelty, but that there was a common bond of union, because "the whole of the

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\* Settlement Report, p. 90.

cultivators in one community being of one descent," they managed in common so far as fines and contributions for miscellaneous village expenditure were concerned. Again we find that *wárisi* (inheritance) and *máliki* (proprietary right) originally implied the same thing. "A man founded a village: his descendants were the heirs of the village lands (*wáris*), and would have reaped all the benefits of the *wirásat* or *máliki* had the Government left any to be enjoyed."\* But Pathán devastation and Sikh misrule reduced squatters and inheritors to the same level. Ancestral shares were forgotten or disused. Responsibilities were imposed on the founder's kin or immigrant outsiders indifferently; and when the intricate problem thus created came before the British Government for solution, the knot was cut by the institution of a new status, that of the so-called *málikán kabza* or *málikán makbuza*, possessory owners granted proprietary rights within the limits of their actual occupancy without any share in village common lands, which were reserved to the *wárisán*, the inheritors.

It must not, however, be supposed that the village was invariably held together by the tie of common descent from a mere section or single family. The probability is that in the times which Ahmad Shah Durání made so troublous "a much greater concentration of the village communities took place than had existed before. The inhabitants of distinct hamlets collected together the better to resist the common enemy; and in the depression which followed almost all previous distinctions were lost sight of." The Sikh system did not tend to dissolve the new bond of union. But "the combined sections of the community were from the first nearly connected by the tie of clan, and possibly of relationship. Pedigrees were but half remembered. Nothing remained but a tradition that the village was composed of two or more families, to each of whom in former times belonged a separate estate." Here is a mode in which *tarafs* might originate, and as the concentration implies the previous existence of the commune, and was due to political events, it does not in any way vitiate the theory of the initial development of the village out of the tribe. On the contrary, we see here the old tribal association reasserting itself.

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\* Settlement Report, p. 106.

† *Ibid.* p. 115.

There were special reasons for dwelling a little on Jhelum and Gujrát, and I shall touch upon several of the districts next in order more briefly.

In Gujránwála there are vast expanses of the Rechna Doab waste. "Here," writes the Settlement Officer, Mr. Morris, in 1856, "in consequence of the unsettled state of the country for the last half century, the former prevalence of the 'Kun' system\* (the evil effect of which has been almost to do away with the distinction of proprietor and cultivator), the ill-defined nature of proprietary rights and the pastoral habits and nomad character of the people, we do not meet with those thriving village communities, bound together by ties of clanship and brotherhood, every member of which will take care that his own rights are recorded, and the liabilities of the others not omitted. On the contrary, the people here almost invariably ignore the principle of joint responsibility."† This state of things is contrasted with that in the Jullundur Doab "where the village communities are thriving, common rights and privileges well known and enjoyed, and the principle of joint responsibility acknowledged and understood." We have seen in Gujrát that joint responsibility for the revenue demand may be absent whilst tribal union of some kind is still to be found. Mr. Morris clearly did not mean either that there were no villages, or that tribal influences did not in any way regulate their possession; for I find in the appendix to his report that the Viraks, a *got* or clan of the Ját race, owned 190 villages; the Chímahs, a like clan, 111, chiefly in one sub-division; the Bhattis, a Rájpút clan, 106; the Sandús, a Ját clan, 90; the Chattehs, 78, chiefly near Ramnagar; the Tárar Játs, 77; the Raiens, 67; Musalmán Rájpúts, 51, chiefly in two localities; and so on,—with 19 other tribes owning from 7 to 38 villages, some more or less scattered, but almost all mainly concentrated each in the same part of the district.

Siálkot is a much better type of a Punjab district than Gujránwála. Mr. E. Prinsep in his Settlement Report of 1863, page 89, says, "property is held almost universally by tribes." Elsewhere‡ he states that the tribes number 127 in all—

"Some of these are located in colonies, others in detached villages.

\* Appraisement of corps for realisation of revenue.

† Settlement Report, p. 20.

‡ "Siálkot Settlement Report," p. 16.

	Villages.
Bajwa .	173
Awán .	120
Selaria .	126
Gúman .	103
Chima .	80
Sandú .	50
Manhas .	44
Kalán .	45
Goráya .	34
Sahi .	21
Deo .	17
Nagri .	17
Malli .	19
Hondul .	14
Púlarwan .	10

The 15 detailed in the margin represent the most powerful and dominant races : 13 are of less prominent notice, and 99 may be classed as Miscellaneous, being the owners of only few and scattered properties. The Manhas and Selaria and Púlarwan are essentially Rájpút; the Awáns of purely Muhammadan descent; the remaining 13 of the principal tribes are sub-divisions of that great race of yeomen commonly known as 'Játs,' and, as far as I can discover, were all Hindús in former times, and claim a decidedly Rájpút origin."

### In the Lahore District\* a—

"relic of the old division of the country is the group of villages inhabited by Játs of the Bhúlar tribe, which is known as the Chaurásí of the Bhúlars. The word appears to have been commonly used in Hindústan for a group of villages numbering eighty-four or thereabouts. There are not more than twenty-five of these villages now existing, and none of the people can give the names of the whole eighty-four. The group may have been termed 'Chaurásí' when that number of constituent villages really existed. An article on this subject may be found in Elliot's Glossary" (Vol. II, pp. 47 *et seq.*, edition of 1869).

I have counted in the glossary fifty cases in which Chaurásis in the North-Western Provinces are described as belonging to tribes or clans. These are the great majority of the instances cited ; but a Chaurásí does not appear to have been always tribal. The partition of a territory amongst members of a family might also give rise to such a name. In Lahore the origin of the division clearly was tribal, and that is all that is necessary for my argument.

The Gurdáspur District was deeply affected by the rise of the independent Sikh Chiefs and the centralised government of Ranjít Singh. In the pargana of Adinanager,† according to the report of Sir Henry Davies, in 1854, Hindú Rájpúts of the hill clans prevail to the north of a stream called the Khal. "On the banks of the Rávi, Muhammadan Rájpúts and Gújars are intermixed with intrusive Játs. The Bhangar, comprising the greater part of the area of the Doab, excluding riverside lands, is generally in the possession of Játs, whilst Rájpúts, Gújars and Labáñas divide the low land between the ridge and the Beás. Har-chand Rájpúts hold Awank, Jhabkura, Parmanand and Kanowan, large and influential villages, but they have little union amongst themselves."

\* "Lahore Settlement Report," 1860, p. 8.

† Settlement Report, p. 12.

Here we have the usual facts, a territorial distribution of tribes and their ownership of villages. There are circumstances in the Sháhpur Kandi tract of this district, of which the settlement was reported in 1873, that would at first sight seem to tell against the belief of the origin of the village in the tribe. But the quotation I shall make must be deferred here, as it belongs to a later portion of the subject.

A return\* in the Settlement Report of the Una pargana of the Hoshiárpur District, dated 1876, shows the possessions of the various tribes as follows :—

Name of tribe.	No. of villages.
Bráhmans . . . . .	96
Hindú Rájpúts . . . . .	239
Kanets . . . . .	24
Khatris . . . . .	2
Játs . . . . .	9
Gújars . . . . .	15
Miscellaneous . . . . .	268
Total . . . . .	653

The Khatris, Játs and Gújars have a strong footing in the "miscellaneous" villages. The Bráhmans are collected in one tract, the Jhandbarri *iláka*. The locality of the miscellaneous tribes almost coincides with that of tenure by possession, the *bhaiachára* form; and so does that of the Rájpúts with that of tenure on shares. There are sixty-three *zamindári* or joint village tenures, scattered here and there, but they chiefly prevail in Bráhman communities.

The thriving communities of Jullundur have already been mentioned. They were for the most part originally held on ancestral shares. "Circumstances might have changed the relative proportion of the actual shares as it had originally stood; but the ancient partnership was preserved in the remembrance of the brotherhood."† According to the returns included in this volume, there are only ten villages in the Jullundur District in which possession is the sole measure of right in all lands. Major Beadon, the Deputy Commissioner, writes in a recent letter :—

"There are three tribes in this district whose villages are clustered together: first, there are 223 Ját Hindú villages whose boundaries adjoin and whose lands extend over parts of Phillour and Nawashahr Tahsils:

\* "Una Settlement Report," p. 43.

† "Jullundur Settlement Report," 1852, p. 31.

next there is a group of 27 Awán villages in the south of the Jullundur Tahsil. \* \* \* Lastly, in the Nakodar Bet there are two groups of villages, 47 and 19 respectively in number, of Araiens. \* \* \* There is also a group of 43 Ját villages in northern Nakodar."

He adds that there are no groups of villages exceeding 20 in number where the whole cluster belongs to a single *got* or clan.

In the Ludhiána District\* "by far the most general form in which the land is occupied by the cultivating community is that it is divided amongst the brotherhood according to ancestral shares, each proprietor possessing equal rights." There are no estates founded on possession exclusively.

In the Umballa District there is a *chauràsi* of Rájpúts, but its origin was family and political, not tribal. Proprietary rights were much confused by Sikh violence and rapacity; but there is good reason to believe that at the time of the last settlement (1853), the village brotherhoods were as strong and compact here as further west. Certain classes had asserted rights to rent charges of more than one kind; but below the superior proprietor stood the village group on its usual footing. Nearly all the tenures are now *bhaia-chára*.

In the last two cases I have referred only to the nexus of common descent amongst the members of the community, with which either supposition, that the village arose out of the joint family, or that its birthplace was the tribe, is consistent. The reason is that in tracts very anciently inhabited the population necessarily becomes much intermixed. Thus I have not yet been able to discover in these districts clear-cut lines demarcating clan from clan and tribe from tribe, as in the north-west of the province. But if we turn to districts much disturbed and partially depopulated during the last two hundred years, we shall find that tribal localisation reappears. The Nardak of Karnál is essentially a Rájpút tract, though Rors and Játs have obtained a certain footing.† The district is one of strong village communities, and I have alluded above to its history. When the Gohána Tahsil of the Rohtak District passed into the hands of the East India Company in 1803, what had once been a flourishing country had become, under the raids and rule of

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\* Report of 1859, p. 19.

† Karnál Assessment Report, 1878, p. 79.

Afghan, Sikh and Mahratta, more than two-thirds waste land.\* Village communities are probably nowhere seen in a more perfect form than in the Rohtak District. To the east of that district the Dahia clan of Játs spreads over many villages, all grouped together near Kharkhaura, and beyond this town the Dahia country extends far into the next district, Delhi. To the west there is a like gathering of the Ját Ahláwats.

I submit that it has now been shown by facts taken from every part of the Punjab, except the districts lying along the Sutlej towards Rájputána, that the presumption of the origin of the village in the tribe or clan is a reasonable one; and secondly, that common descent is a powerful principle of cohesion in Punjab village communities. It is obvious that if kinship be allowed to be strongly operative in these communities, that is of itself a consequence which might follow from their originally tribal character; and conversely where tribal origin is undoubted, the fact or acknowledged fiction of common descent may be assumed, for a tribe is nothing but an association united by real derivation from a common ancestry, or the supposition, acted on in the relations of life, that such a derivation is a fact.

Without elaborating further an argument which seems to me to suffice, I will briefly mention two general considerations which go to confirm the theory here put forward.

Throughout the Delhi territory and the Punjab proper up to the Indus, the Játs are spread in great numbers all over the country. At the last census they reached the total of 2,187,490, being chiefly Hindús and Sikhs towards the east, and Muhammadans westwards. They are agriculturists, their organisation by clans is notorious, and they are habitually grouped in village communities. Wherever Játs are to be found, there tribal influences and kinship are still at work.

The right of pre-emption in village lands is practically universal. So wide-spread is it that it is by law presumed to exist in all village communities. The legal order in which the right can be claimed, in the absence of custom to the contrary, appears to me to be open to criticism. But taking it as it stands, it plainly testifies to the connection between proprietary right and blood relationship. The right belongs *first*, in the case of joint undivided immoveable property, to the co-sharers; *secondly*, in the case of villages held on

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\* "Gohána Assessment Report," 1878, p 7.

ancestral shares, to co-sharers, in the village, in order of their relationship to the vendor or mortgagor ; *thirdly*, if no co-sharer or relation of the vendor or mortgagor claims to exercise it, to the landowners of the *patti* or other subdivision of the village in which the property is situate, jointly ; *fourthly*, to the same person, severally ; *fifthly*, to any landholder of the village ; and, after this, to certain tenants with rights of occupancy. Now, if we remember that joint undivided property is usually held by relations, it will be seen that the right follows the degree or the probable presumption of the tie of blood.

## II.—THE VILLAGE AND SEVERALTY.

I have now to pursue the second branch of the inquiry. Assuming the village community to have come into existence, how does it propagate itself; and what is the subsequent order in which several rights are evolved? I shall return to localities of comparatively late colonisation to seek suggestions for the solution of these problems.

Although tribal ownership is conspicuous in some parts of the Dera Ismáil Khan District, the village community flourishes in different tracts. From various causes there is not infrequently a double proprietary body in a village. In the particular part of the district to which I am about to refer, the south-east trans-Indus, it appears to have been due in part to a Beloch immigration having succeeded a Ját immigration,\* which set in about the beginning of the fifteenth century, and in part to one class or the other having, by breaking up the waste, reduced the original holders to mere recipients of a rent charge.† Such recipients are *ála máliks*, superior proprietors; and a *had* is their estate. Its limits are here usually conterminous with the village boundary, but they are not necessarily so. About the beginning of the present century, Nawáb Muhammad Khan, Sddaozai,‡ Governor of the province of Dera, gave a great impulse to Beloch immigration. Without much regard to the claims of the old *had* proprietors, he allotted waste lands to any one who would found a village. Large numbers of villages were thus founded by new settlers, and are now held by their descendants independently of the old *had* proprietors, and subject only to the payment of quit-rent to them. In this tract, known as the *Makkalwad*—

“206. Many villages arose in the following way. Two or three *ála máliks* settled in an outlying part of their *had*. They associated with themselves a number of non-proprietors, and cultivated with these on shares, based on the number of pairs of oxen (*joras*) supplied for the construction of the dams, for which their lands were irrigated. The headmen would be taken from among the *ála málík* families; but in other respects these and the newcomers would be both on the same footing,

\* “Settlement Report,” 1879, p. 39.

† Ibid., p. 108.

‡ Ibid., pp. 40, 54.

as regard rights of *lathbandi*\* in the lands which they had occupied. From cultivating in common they gradually took to partitioning the village land, and these cultivating tenures are found in all stages of development,—*zamindári*, *imperfect pattidári* and *perfect pattidári*. In old partitions, regard was often paid to differences in the quality of the land which no longer exist, and the holdings in consequence do not now correspond to the original shares. Such villages are practically *bhaiachára*. It is in the Sheru *iláka* that these cultivating tenures exist in the greatest perfection. The villages here are generally small, and sometimes are owned by the descendants of a single founder. Most of them have been settled during the present century. In many of them the lease was taken up at the summary settlement by the cultivating body on their shares or *pattis*. In most of these villages, however, along with the lands held by the sharers, there are plots (*kanah*) held by outsiders, who have obtained them by gift or purchase. When such villages have been partitioned, present possession seldom agrees with the original shares; and in distributing the new assessments, they have had to be treated as *bhaiachára*, the jama being *báched* (distributed) alike on the lands of the sharers and of the *máliks makbúra*, or holders of *kanah* plots. These latter never pay anything as rent to the original inferior proprietary body, and, *quo ad* their own holdings, are on an equal footing with them, though having no rights in the *shámilát*, or common property of the village.”

Here we have direct interposition by the Government of the day and already existing communities. But when a fresh village is started under these conditions, the development proceeds from joint cultivation to several ownership. The germ, it will be noted, was not a joint family but two or three superior proprietors associating non-proprietors with themselves.

We may now proceed to a part of the province on which I have as yet said nothing—the territory along the Sutlej, between the battlefield of Sobraon and the borders of Rájputána.

The Dogars are supposed to be Chauhan Rájpúts converted to Islám, who migrated first from Delhi to the neighbourhood of Pák Pattan, in the Montgomery District, and thence along the banks of the Sutlej to the Ferozepore District, which they entered rather more than a hundred years ago. They took violent possession of the country, overriding every other claim. They are not much intermixed with other tribes, and their home is the western portion of the low-lying lands near the river. The Nypals are a similar tribe, a section of the Bhatti Rájpúts from Sirsa or Bhatianá. They immigrated about the same time. They now

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\* This means bringing the waste under cultivation by embanking fields to hold up hill torrent water for irrigation.

"occupy the iláka of Makhú and part of Fatehgarh. They were at one time spread over the whole country to the west of Makhú, as far as Ferozepore, but were driven out thence by the Dogars, and they (the Nypals), in their turn, \* \* \* drove the Gújars out of Makhú." I mention the Nypals and Dogars for the purpose of contrasting them with the Játs. The two former tribes "very seldom divided the village area in accordance with their shares, but have generally held all the land in common."\* Here is a case of tribal acquisition in arms leading directly to communal village property. But the Ját villages were located in another way. Very few of them were at settlement (1855) more than sixty or seventy years old, and the circumstances connected with their foundation are thus very well known.

"A new village† would be usually founded in the following manner. A certain number of zamíndárs, either because they were in a minority in their native village, and were discontented at not possessing more influence in its concerns, or had been driven out of it in consequence of a quarrel with the majority, or because it had become too populous for its limited cultivation any longer to support all the inhabitants, would determine on migrating elsewhere. One or two of their most influential men would then go to the Kárdár, or ruler of the country, and make an agreement with him for acquiring possession of some one of the numerous deserted sites with which the country is covered, and the land attached to it." Then the village would be founded with a ceremony, the main function being the planting a pole to the north side of the intended habitation. The next process would be to divide the village land by lot, according to the ancestral shares of the different castes or families founding the village. The whole area would be marked off into two or more primary divisions called *tarafs*; the *tarafs* would be sub-divided into *pattis*; the *pattis* into *laris*; and the *laris* would be divided on ploughs. A sufficiency of common pasture would be reserved. Lots would be cast, and cultivation would begin. Sometimes the original distribution by lot lasted up to settlement. But, as a general rule, under the pressure of Sikh taxation, redistributions, thus evincing a joint interest, were made. In these all traces of the original shares were usually lost. There were not always so many sub-divisions in the original distri-

\* "Ferozepore Settlement Report," pp. 5, 17, 57-59.

† *Ibid.*, p. 59.

bution as I have mentioned. The number depended on the size of the village, the clans or families, or party-feelings, or the like. " Sometimes there are three orders of sub-divisions, sometimes two, sometimes one ; often no primary subdivision at all, just as the circumstances of the case may require." In some parts of the district where the land was least valuable, "there was never, even at the commencement, any distribution by lot ; but all concerned settled down to cultivate that part of the area which came nearest to hand, and never held any fixed share." Where shares were observed, encroachments on the common land were amongst the causes that interrupted the correspondence between shares and the actual holding. The Settlement Officer therefore generally caused the revenue to be fixed as payable in accordance with the extent and value of the land found by measurement to be cultivated. But—

" in a few instances, where the original shares did not very materially disagree with the present measurement, the zamíndárs would prefer paying in accordance with them ; and sometimes, notwithstanding a considerable difference, if there was much common waste land, they would still decide to continue paying as formerly ; but those who had less land than they were entitled to by their original shares, either made good the deficiency at the time out of the common waste, or retained a claim to do so, whenever they required to extend their cultivation. Again, in cases where the proceeds of the common land were considerable they would agree to divide them upon original shares, and to pay on their separated land according to its value, as determined by the chain measurement."\*

The Dogar and Nypal tenures were classed as *zamíndári* ; and these Ját tenures as *pattidári* or *bhaiachára*, according as the principal interests in the village were represented by the original shares, or by the extent of land in actual possession.

Now, in the instance of these Játs, there was community of race ; and the so-called difference of *caste* is referable to difference of clan. Here, again, the stock was not a joint family, but a voluntary association. The Government official plays his part in the drama, and the village from the moment of foundation has the seeds of severalty within itself. But it is interesting to find, from a passage I have not quoted,† that the *tarafs* were fixed by arrangement. Lots were cast for the sub-divisions within the *taraf* ; and it

\* " Ferozepore Settlement Report," p. 64.

† Para. 216.

is clear that the *tarafs* were assigned according to *caste*, that is, clan or family. The analogy to the house community is therefore striking, even though the *taraf* does not here occupy an intermediate stage between the joint family and the village.

I will now make two extracts from a letter, dated 16th March 1880, from Mr. Wilson, late Assistant Settlement Officer, Gurgaon, and now Settlement Officer, Sirsa, written to me, but with no knowledge either of my views or of my intention of drawing up this particular paper. In the Sirsa District—

" at last settlement, the most prevalent form was the *zamindári*; for almost all the newly-settled villages (and a very large number of the villages in the district were then of less than twenty years' standing) had been given in proprietary right to one individual, or more generally to two or three brothers or relatives, or, in a few cases, to two or three persons not related to each other. The tenure of the village as at first conferred was, I believe in every case, *zamindári*, or communal. Where the proprietary right was conferred on one man, of course he became sole owner. Where two or three became proprietors, they were recorded as owning the whole village in common, in equal shares. And it is worthy of notice that even where such men were related, so that in succeeding to ancestral property their shares would have been unequal (as for instance, an uncle and two nephews would take half, one-fourth, and one-fourth), yet in taking such new villages they took equal shares; that is, they took proprietary rights as *individuals*, not as a family. I believe there is no case, among so many, in which a new village was given to an already existing village community, or even to a family as a family. Perhaps, this may have been partly due to the desire of the English officer who bestowed the proprietary right to fix the responsibility of settling the village on individuals, on whom he could work better and more definitely than on a community."

" These villages," he continues, " began by being *zamindári*, and are fast becoming *pattidári*, and undoubtedly tending towards the *bhaia-chára* form of tenure. In many cases the original owner invited men of his own tribe to come and settle in the village on favourable terms; sometimes if they were near relatives of his, giving them a small defined share in the proprietary right, the tenure however still remaining communal. In other cases he managed, by low rates of rent, to settle his village with men of other tribes, generally *Bágri Játs*, or *Kamíns*. The extremely low revenue demanded from the proprietors enabled them to offer very favourable terms to tenants from older settlements, and the development of the country has proceeded with extraordinary rapidity. Land has increased many times in value, and proprietors have become much more careful about their rights. The climate, too, is healthy; and the actual number of proprietors has largely increased, simply by the continued excess of births over deaths. The tendency to separate and individualise rights has asserted itself; and many proprietors have since last settlement asked to have their rights marked off from those of their

joint-proprietors by a partition of their land, hitherto held in common. Their requests have, in accordance with our system, been granted. Several such applications for partition have already been presented to me since settlement began ; and I can see that, owing to the tendency, fortunate or otherwise, that a settlement necessarily has of calling people's attention to their rights and bringing disputes to a head, applications of this kind will very numerous ; and one result of settlement operations will have been very much to increase the individualisation of rights in several ways."

The points that the village did not here originate in the joint family, and that the progress is from joint ownership to severalty by the usual stages, are thus very clear. Tribal connection influenced the original association ; blood relationship the assignment of proprietary rights. Outsiders were sometimes brought in as tenants paying rent ; but these were not the invariable incidents of village foundation. On the contrary, in another letter Mr. Wilson tells me that Játs of different clans, and even Sikhs and Bágris, are found associated as proprietors in the same village ; and that where relations of the village founders afterwards came in and settled with them, the amount of the shares assigned to such new comers depended on the will of the original proprietors, not on the degree of the relationship existing between the parties respectively. The estate, in fact, was distributed by agreement, not in accordance with ancestral shares ; and the striking circumstance is, that individuals voluntarily combined to form a community archaic in everything except universally close kinship between its members. Here we may trace some explanation of the composite character of village communities in parts of India where tribes have lost their local contiguity. It is easy to see how villages originating like those of Sirsa, might be described in terms applicable in part to a purely voluntary association, and in part to a group whose chief bond of union was common descent.\*

In the Gurgaon District the *patti*, which is the same thing as the *taraf*, and is a large block of the village lands, appears as the transitional form of joint ownership. Whether or no it be an expansion of the joint family, it is seen disengaging itself from the blended texture of the commune—

" You may perhaps wish to know something of my Gurgaon experience in partition. Usually when a village community begins to separate off its rights, it begins with the cultivated land. Usually the

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\* See " Village Communites," p. 117.

different individuals have for years been cultivating continuously the same fields, and the management of the income of the cultivated land seems most difficult; besides, the rights which can be exercised over the cultivated land are more valuable and more definite than rights over other classes of land. Then they claim partition of the culturable waste, then of the village site, and lastly, perhaps, of the pond and burying-ground. Often after having had their land separated off, the *pattis* continue to hold each the land of its *patti* jointly, still paying the share of the revenue fixed according to the ancestral share of the *patti* without regard to the land. Then, at settlement they find that the assessment is fixed with regard to the land; and the *patti* whose land is less than its ancestral share (as it sometimes turns out to be), or whose land is least developed, applies to have its assessment fixed according to its land, and no longer according to its traditional share. This seems but fair, and is granted. The same tendency prevails within the *patti*; and the process goes on until you have every man owning a defined plot of land and paying the revenue assessed directly on that plot. We had many such cases in Gurgaon. The distribution of revenue on holdings has a powerful influence in this direction; and mark, the tendency is all one way. There is, one may say, never an application made to join holdings hitherto separate, or to revert from payment of revenue on land held to payment by ancestral shares. The tendency is all from *zamindári* to *pattidári*, from *pattidári* to *bhaiachára*; and none the other way.”

In dealing with the primary origin of villages from the tribe, not their growth out of parent village communities, I quoted some passages which directly bear on the present subject. The Peshawar District has villages with *kandis*, the *tarafs* of the Punjab Proper; in Sháhpur there are similar divisions, the *vurhees*; the *tarafs* of Ráwalpindi are due, like those of Ferozepore, to initial diversity amongst the village founders. In Jhelum the enormous village of Lilla, where all the proprietors are of a common stock, was split up into four parts, now independent. There, too, we saw hamlets of Ját cultivators, growing up into villages round large central Ghakkar communities; and in Gujrát separate villages were driven to coalesce for mutual protection.

Details having now been given for one frontier district, for two districts on the Sutlej, and for one in the territory near Delhi, it will be best to produce the few more illustrations required from the Central Punjab. But I may first add that in the Rohtak District the villages are constituted in greater divisions known as *páñas*, and smaller divisions called *tholas*, springing from the branches in the ancestral tree of the coparcenary body.\*

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\* “Settlement Report,” 1838-39, p. 54.

In his report on the Una pargana of the Hoshiárpur District (1874), Mr. Roe, the Settlement Officer, observes\* :—

" It is almost a natural law that tenures should only change in one direction, from joint holdings to severalty in shares, and from shares to possession. Taking an estate originally joint, we find that, as a general rule, when the shareholders approach the limit that the estate will support, they divide it in ancestral shares. After a time by natural selection some families increase at the expense of others : they are more prudent, more energetic, or more fortunate. The weaker then resign their shares, either wholly or in part, to the stronger, and ancestral shares pass into customary. The same law still continues to operate. The shares of sub-divisions are divided amongst families, and the shares of families amongst individual proprietors, until at length possession becomes the sole measure of right."

He then gives a tabular view, from which it appears that out of 531 villages 37 were held by sole proprietors, 63 jointly by more than one proprietor, 235 were in intermediate stages, still held on shares in some way or another, and 158 were held on possession from the commencement. Only 38 villages had passed through all the stages of development from joint ownership to possession.

The report of the same officer on the Sháhpur Kandi tract † in the adjoining district of Gurdáspur explains how villages may be held on possession from the beginning :—

" 60. Out of the 140 villages, 45 have been held in possession ever since their foundation ; and this of itself implies that their existence has been a short one. This is corroborated by the lightness of their jama (land-revenue assessment). Whilst the other villages are paying, roughly speaking, a little under a rupee an acre, these pay less than eight annas. Their number is less than one-third of all the villages, but their area is more than half the whole. Although many of the villages have been founded only a short time, yet in many classes this foundation was rather a restoration than an original creation. When the power of the Hill Chiefs fell before the Sikhs, many Rájput village communities left their lands and followed their former masters. Their fields lay waste for a short time, and were then taken possession of either by their former tenants or by colonists from the surrounding villages. Many of the old proprietors returned and claimed their lands at the regular settlement ; but their claim was almost invariably dismissed, as barred by the law of limitation. In some instances, however, the feeling of the people was so strongly in their favour, that they were voluntarily readmitted, not indeed to the whole, but to a portion of their old rights. This gathering together of a fresh community has been treated as the foundation of the village ; and hence the number said to have been held on possession from the commencement. Another cause of so many

\* Page 45.

† Dated 1873, p. 19.

villages being held in this way arises from the fact that many of them are, properly speaking, not villages at all, but merely a number of scattered hamlets, originally founded by independent squatters who broke up waste land, which have been grouped into villages for the purposes of revenue administration.”

I said that there were circumstances in this tract which might seem opposed to the theory of the origin of the village in the tribe. I quote what Mr. Roe says on the subject:—

“ 61. On the whole, the statement of tenures is but a confirmation of the general belief on the history of village communities. The ordinary practice is for a village to be founded by a single family, for it to be held for some time by the descendants jointly, for it then to be divided on ancestral shares, for the ancestral to pass into customary shares, for shares to be gradually lost sight of, and finally for possession to become the sole measure of right. Thus, out of 140 villages, 45 have always been held on possession, leaving 95 in which shares either have been or are regarded as the measure of right. In 28 of these, customary shares have been the rule from the beginning; in 10 of these (3 + 7) the proprietors are of different castes, but in the remaining 18 they are all of one caste, and in the great majority of cases descended from a common ancestor. Such villages clearly give us only another form of foundation by a common ancestor. The village is founded by near relatives; but some are richer or stronger than the others,—so a share is awarded to them in excess of their ancestral right. In 9 villages shares have partially fallen into disuse; and in 8 they have entirely disappeared. I may remark that this disappearance has often been caused by the action of our officers at the last settlement,—when many villages which were then really held on shares were treated as held on possession. Application has often been made to me for a restoration of shares; but it could not be granted without the consent of all the proprietors; and of course those who held more than their proper share were not so foolish as to give this consent. But in the remaining 50 all existing rights have been derived by descent from a common ancestor. Twenty of those villages are still held on a joint tenure, and 22 have been divided on ancestral shares; in the remaining 8 the ancestral has given way to a customary measure of right. The commonest cause of this change is that some branch of the family has become extinct, or fled from the village; and its share, instead of being divided amongst all the remaining proprietors, has been transferred bodily to the branch of the family best able to manage it.

“ 62. Thus we find that out of 95 villages (for I leave out the 45, for the reasons given in paragraph 60), 48, or more than half, have undoubtedly been founded by a single family. Of the remaining 47, 14 are shared by Rájputs and other castes, leaving 33 which have either directly developed from the ancestral type, or are merely slight variations from it; so that we may fairly say that a proportion of (48+33) 81 out of 95 villages give strong proof of the ancestral origin of proprietary rights.”

This explains very well how the so-called “customary shares” are often produced. The uneven shares in a Sirsa

village would be "customary;" but whilst it may be at once admitted that the facts given go to confirm the belief in the connection between proprietary right and descent, it may be urged that we have here villages founded by families, and not by clans or small sections of tribes. It is, of course, probable that even an individual founder of a village will have sons, and perhaps brothers; but granting, for the sake of argument, that a joint family founds the village, whence did that joint family itself appear? Mr. Roe is writing of a tract in the near neighbourhood of a long-inhabited country; and the obvious answer is, from another village. If so, we are no nearer the solution of the problem of the origin of villages in general than we were before. But if the joint family did not come out of another village, it must have come out of a tribe. Some one will probably take the lead in settling at a particular spot. One man or one family, unless of enormous size, does not by itself make a village; though it may guide the process, and acquire a petty hereditary distinction in consequence. There must plainly be co-operation and a certain number of hands. In old settled places, where tribes have lost their localisation, men of different clans may act together; and so, too, men of different stocks already settled in intermixed villages may agree to go out together to break up the waste. But where a tribe holds a whole countryside, the neighbours who could join in raising habitations on a common site are, by the necessity of the case, fellow-tribesmen. If you push the enquiry back as far as it will go, you must come at last to the tribe; because the theory that the village community was derived from the joint family, through the intermediate form of the house community, does not explain the origin of the joint family itself. On the other hand, the theory which seems to me applicable to the Punjab does explain both the village and the family. The tribe is taken as the primary fact, not because it seems insusceptible of explanation, but because, as a matter of practice, we have nothing earlier here of sufficient consequence to need present notice. Moreover, to enquire into the origin of tribes would be a dissertation by itself. This much, however, may perhaps be said, though it presupposes the existence of the tribe. In times of habitual private war and barbaric invasion, there is no need to search the mysteries of human nature for the reasons which induce men to combine. When every one who is not a fellow-tribesman is a foe, and every stranger may be killed as ruthlessly as though he

were a wild beast, men must combine under penalty of annihilation. They must adapt themselves to their surroundings; and disunion will be punished by death. Scattered families, if such are imagined, would die out. The only persistent type would be the gregarious one. Crushed into their respective characters by the fiercest impact of natural selection, the fortified village and the clan, with its chieftain, would face one another amid desolation.

For reasons which will appear later on, I extract here a passage from Sir Henry Davies' Report of 1854 on the Gurdaspur Settlement. He mentions that in making another settlement, he would lean towards the system of shares; and then continues\* :—

“ I am not advocating a fanatical adherence to ancestral rights, but the maintenance of a popular custom; for the fractions often vary considerably from the original inherited shares. There is scarcely a township which has not passed from grain to money payments; and upon the transition the almost universal practice is to divide the revenue into fractions, variously expressed in ploughs, or as *dehrees*, &c. Each man knows his fraction, and that he is entitled to a corresponding share of the best soil, the irrigation, and the land. As long as he got what his peers pronounce to be his full share, he cannot complain; and if he does complain, he has only to prove the extent of his revenue payments for past years. But if no advertence be had to his share, it becomes very difficult for him to establish a claim to any land from which he may have been ousted. He has no document; evidence concerning the length of possession will be contradictory; and there is consequently a strong leaning amongst judicial officers to the maintenance of possession. Whichever way we look at it, whether as throwing upon the coparceners the business of valuation and partition of land, and leaving to the recorder merely the arithmetical calculation according to fractions, or as furnishing a key to the rights of the coparceners, the maintenance of the fractions must be regarded as very useful. I in no way depreciate the value of the measurement: it is the only means of testing whether or not men have got the extent of land for which they pay revenue. But having ascertained the agreement of shares and holdings, I would uphold the system intelligible by long use to the coparceners, and not substitute the area for the *share* as the measure of rights and rule of the apportionment. On the contrary, I would insist on a new fractional detail of shares in preference to giving up the old plan altogether.

“ 23. *Causes of changes of tenure from imperfect pattiidári to bhaiaachára.*—There are several causes for the preference of possession before fractional shares as the basis of apportionment. The work is so long and expensive, that all parties are anxious to bring it to an end; hence, if the zamíndárs will only agree to pay according to the area recorded in their names, the muharrir (clerk) at once evades the task of comparing his khationi (record of rights) with the shares. Now, a khati-

oni is liable to errors of measurement, errors of arithmetic, and errors of record. The area of fields may be falsified. The aggregated extent of a holding may be miscomputed, and one man's field may be written down in another man's name. Any arrangement by which this document may be upheld, facilitates the progress of the work immensely. The recorders, therefore, all advocate the khationi as the basis of apportionment. The zamíndárs, again, are ignorant and careless. Many, and those the strongest, profit by the maintenance of possession, and those who lose their rightful shares pay so much the less revenue by the new apportionment. It is to be hoped that no violent injustice is done. With open courts it is almost impossible. But an ancient custom is abrogated, one peculiarly suited to an illiterate people, which was admirably adapted to maintain individual rights, and had, without official records or interference, effectually in troubled times and for several centuries, served instead of title-deeds. I dwell upon its partial disappearance because, if reasserted hereafter by common consent of the coparceners, I recommend its revival."

The Ludhiána Settlement Report (1853) gives a good description of the *patti* or *taraf*\* :—

"In pattidári villages, which number 19, the land and its quota of revenue being divided among the heads of each share, who seldom number more than half-a-dozen, the process (of distributing the revenue demand) extends so far as to allot the due amount of revenue to each sub-division of the villages. Each sub-division of the village then, so far as it goes, may assume the form of zamíndári villages, as applied to the whole village; and each *patti* or share is usually a perfect zamíndári tenure,—that is, where the greater part or all of the cultivation is in the hands of non-proprietary cultivators reaping the whole rental, dividing it among themselves according to their ancestral shares, and paying out of it the Government demand, for which they are jointly responsible.

More briefly, the community in profits of cultivation rests, not with all members of the village brotherhood, but with sections of the brotherhood, consisting of about half-a-dozen people, such sections holding in severalty relatively to each other section, but internally undivided in estate. A village made up of three or four house communities would enjoy its property on precisely the same tenure.

I shall conclude my very numerous extracts from the Settlement Reports by quoting Mr. E. Prinsep's theory of tenure. It must be understood as primarily referring to the Siálkot District. The information now available from the frontier had not then (1863) been collected, or it is probable that Mr. Prinsep would have stated his conclusions somewhat differently. The arguments I used in connection with Mr. Roe's Sháhpur Kandi Report apply here, and I will add to

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\* Page 60.

them below. Meanwhile, I remark that Mr. Prinsep purports to state a theory, not to describe an actual set of facts, and that he is obliged to postulate that his village founder shall have six sons in order to give his theory verisimilitude.

" 330. Generally speaking,\* the Theory of Tenure may be described as at one time or other coming under one of the following stages :—

- I.—The Patriarchal or Landlord.
- II.—The Communal or Joint-stock.
- III.—The Divided, regulated by the ancestral shares.
- IV.—The Divided, regulated by customary shares.
- V.—The Accidental, regulated by possession.

I know no better way of showing the transition from one stage to another, and the causes which produce it, than by giving the following illustrations.

" 331. The founder of a village secures a property by purchase, grant, appropriation, or conquest. He has a family of six sons ; he holds it all himself. This represents the first period, and corresponds with the pure Landlord system.

" 332. At his death the six sons, being connected by a strong tie, hold the property '*in common*.' These sons, too, prefer to maintain the joint interest in this form. Land is abundant, revenue is taken in kind ; they have no differences to occasion any necessity for resort to division ; so the 'Communal' system is maintained intact, the interest of each brother or shareholder being regulated by the laws of inheritance.

" 333. In course of time, as population increases and with it the demand for land, dissensions begin. The descendants of one son have been cultivating less, those of another more, than the shares which regulate the division of profits. To prevent future disputes, the estate is *divided* according to those laws of inheritance ; and here we come to the third type.

" 334. As generation succeeds generation, and the country is subject to change of rule, stress of seasons and accidents occur leading to hardship to individual co-partners. Some die off ; others leave the village ; some get involved in difficulties ; others mortgage their properties. It can be conceived that mutations would follow, which would increase the holdings of some, while others being unable or unwilling to succeed to lapsed share additional reason would come in to disturb possession, and resort to the law in times when little attention was paid to right, and the influential could generally do as they pleased. In such a state of things it is easy to see how ancestral shares would die out, and *customary shares take their place*, which would agree with the land actually held by each co-partner. Villages of this class would represent the fourth type.

" 335. Ultimately all resort to shares dies out. There may have been money settlement in former days ; poverty may have driven out the old proprietors, who may have been succeeded by cultivators located by the kârdâr ; the land may lie near a large town, and have got so valuable as to have utterly changed hands, or, if still belonging to the old brotherhood, owing to distress, misrule, and a hundred causes, they found it

\* Settlement Report, p. 86.

their best interest to make *each man's occupancy the rule of his interest* in the estate ; or men of different castes may have become owners by original or subsequent appropriation. Whatever was the cause, there is no trace of any kind of shares. The village custom is to throw the liabilities on the *total area cultivated by each person*. This takes us into the last stage. Generally it is owing to some accident or defect in succession that this tenure may be attributed ; so I have termed it the accidental stage.

" 336. Under the classification usually prescribed, the two first would comprise all tenures held in common known as *zamīndārī*, or what is popularly termed *shāmilāt* or *sánji* in this district. The third and fourth would take in *pattidārī*, whether (perfect) completely divided, or (imperfect) in which some land actually held by the brotherhood was formerly *divided* and the rest held in common. In the last I have kept only such estates as are *bhaiachára*, or what I understand to be *bhaiachára*, *viz.*, where *possession is the sole measure of right and responsibilities*, and land is held completely in severalty, whether ever subjected to formal division in previous days or not."

The explanation above given of the origin of "customary shares" is, as we have seen, not exhaustive. They may be coeval with the village, as in Sháhpur Kandi and Sirsa. I have already quoted Mr. Prinsep's assertion that property is held in Siálkot by tribes, and it will be well here to give the context.\*

He refers to measures taken to obviate the hardship—

" of recording estates in which *shares have existed up to the time of settlement*, as *bhaiachára*, where really possession is *not* the measure of their rights, but some share has always been admitted in fact to be so. I have known as many as 120 villages in pargana Shakargarh where the tenure had to be changed. People would not stand it ; disputes were engendered ; and even where the record was upheld by the district authorities (so tenacious are the village communities of their old usages), I have seen instances where they have admitted the claim to a share and to equalisation of possession with share ; and they have gone back to their villages and redressed the injury.

" 340. Seeing how property is held almost universally by *tribes*, how more readily understood is a share as the expression of a man's liability, and what reverence is paid by the descendants of a common ancestor to old usages, as affecting each other's rights, I am not surprised that there should be this adherence to the *pattidārī* type of tenure."

We have then to reconcile what is regarded as tribal ownership of villages with the theory that villages may be founded by a man and his sons. This is easy, if we suppose the tribes to be settled in villages already. The man and his sons are merely the head of a small band of village colonists, the rest being perhaps mere labourers and servants,

\* " Settlement Report," pp. 88-9.

or, at least, content to accept a non-proprietary status. They naturally take the nearest waste available ; and the uncultivated land of the tribal area is broken up on just the same principle as the uncultivated land of the village *mark*. A particular family occupies a plot, but does not sacrifice, as the case may be, its tribal or its village connection. Even if the tribe were not settled in villages, but were passing out of the pastoral or predatory into the agricultural stage, there would be nothing surprising in a village being founded by a single family. The founders would simply be the heads of a new minute section of a clan. The evidence, however, from Dera Ismáil Khan and Bannu seems to me to raise a presumption,—and I do not assert more than a presumption,—that in cases of genuine tribal settlement, as opposed to tribal colonisation after the change from the nomad to the cultivating life has been completed, the clan or section remains grouped together, and the village is originally an organic part of some limb or member of a tribe. Nor is it only from the frontier that this suggestion comes. Amongst the Dogars\* of the Ferozepore District, who took their country by the sword, “the proprietary rights were confined to certain chiefs and to their descendants ; and there are many Dogar cultivators of near relationship to them who have no proprietary rights whatever, and are only common cultivators.” In other words, the distribution of proprietary rights followed the tribal organization as it does amongst the Patháns. The image which best brings the whole process home to my mind is the familiar one of a genealogical tree with many branches. I do not stop to enquire whether or no the single root is mythical. It is hidden beneath the *débris* of ages ; and, however it first came into being, there we have before us the living tribe. A leading stem is severed ; the branches gradually part from this, and the shoots from the branches. But wherever a cutting falls and germinates, the same process is repeated in miniature. The evolution of separate holdings within the village is, stage by stage, analogous to the evolution of villages within the tribe. The section of a tribe occupies a particular part of the tribal area ; and the members of that section, as they settle down to agriculture, coalesce for mutual protection and society in village communities. Different parts of the village area are in time appropriated by different families,—first of greater, then of lesser extent,, just as sections appropriated different parts of the *mark* of the tribe.

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\* “ Ferozepore Settlement Report,” p. 57.

It will be understood that I do not assert any practically invariable law, except the one which is already admitted to be proved; that collective property is everywhere earlier than divided property. Collective property residing in the tribe or clan, I allow that severalty may even appear at once without any intermediate combinations; and I see that Sir Henry Maine thinks the Brehon law of Ireland "reconcilable with no other assumption than that individual proprietary rights have grown up and attained some stability within the circle of the tribe" ("Early History of Institutions," p. 111). So, too, I do not say that the village never originates except in the tribe; on the contrary, I assert that, after tribes have settled down, it frequently propagates itself, or is the fruit of voluntary association. Nor do I contend that a joint family never founds a village. All I say is that, if it does, it must beforehand have been a part either of another village or of a tribe. And, again, the interior differentiation of rights inside the village has not been universally similar. The *taraf* may be as old as the village itself; villages may be held by families in severalty from their foundation. They may move directly from pure communism to pure possession; or they may be always held on shares. In a word, throughout the whole development, this or that feature, which would be clearly defined in a perfect specimen, may fail to appear. The type is collected by comparison. And the general formula, not always applicable in its integrity, but indicating the successive periods into which the facts tend to fall, is that the clan originates in the tribe, the village in the clan, and the joint family in the village. The subsequent history after the village is established is, first, joint ownership by all the members of the community, just as there was joint ownership by the tribe. Then the area is divided into several *tarafs*, each held by coparceners, and each group constituting a section of the commune. Lastly, within the *taraf* there are defined plots of land; or, to look to the idea and not to its concrete expression, the first theory is that of common enjoyment of the produce without dividing the land; the next that the land may be divided, but it must be held according to shares determined by descent; and the last, that the facts found to exist must be accepted, that if a man has more or less than his ancestral or customary share would give him, it is too late to correct the anomaly: shares are disused, and in course of time forgotten.

Of course, this theory is strictly limited to the Punjab, and is not meant as a generalisation upon the history of prop-

erty either in India or in the world at large. So restricted, I submit that it has the advantage of consistency with the wider law, in juridical history, from which the discussion starts. The severalty of clans and villages succeeds the collective property of tribes; the severalty of sections of villages and families follows upon the joint ownership of the village. The theory is also consistent with a far wider law, which it is difficult to state, except in highly technical language.\* But I shall be sufficiently understood if I say that it throughout supposes an ever-increasing specialisation. The tribe is broken up into different clans, the clans into villages, the villages into lots, the lots into family holdings. The group, once simple and homogeneous, becomes complex and diversified. Broadly, the theory may be deduced from the general law of evolution.

Having shown by facts all over the province and stated in official reports by men who had the best possible opportunities and exceedingly strong motives for coming to correct conclusions, that every cause alleged is somewhere actually operative; and having connected the theory by way of deduction with two wider generalisations, one of which is undisputed, I now proceed to some further tests.

The theory is either reconcilable with, or supported by, numerous particular facts ascertained in other countries, and some well-known matters of general history.

Amongst certain nomad tribes on the Asiatic side of the Urals, the direct descendants of one father generally remain grouped together in a system of community. "Among the semi-nomadic tribes subject to Russia \* \* \* the arable land, though generally cultivated by each family on an independent title, is mainly owned in a species of indivisibility. Among the Bashkirs, nothing of the nature of individual property is seen, except as applied to the dwelling-houses and their immediate dependencies."† If these are the same as the Bashkirs described by Mr. Wallace,‡ we see them settling down, as we should say in this part of India, in the character of *ála máliks*, or superior proprietors. There is nothing here inconsistent with the evolution of severalty directly out of the tribe, or with the formation of villages in the same manner.

\* "The integration of matter and concomitant dissipation of motion, which primarily constitutes Evolution, is attended by a continuous change from indefinite, incoherent homogeneity to definite coherent heterogeneity of structure and function, through successive differentiations and integrations."—(Fiske, "Outlines of Cosmic Philosophy," Vol. I, p. 337.)

† M. LePlay, "Les Ouvriers Européens," quoted in "Primitive Property," pp. 7-8.

‡ "Rus a" II, xxi.

According to M. de Lavaleye, amongst the primitive German tribes, not only "was all the territory the undivided property of the clan, but their collective enjoyment extended over nearly the whole of it." The common territory of the clan bore the name of *Mark* or *Allmend*, *Almenings Maurk* among the Scandinavians, *Folcland* among the Anglo Saxons." "The *marken* were called *geraiden* in Alsace, or *hundschaf-ten* or *huntari* among the Alemanni. They included cultivated land, pasturage, wood, and water. Originally they were of vast extent, and embraced whole valleys, as in Switzerland and the Tyrol, and elsewhere immense countries, where States such as Austria, Bavaria, Carinthia, Carniola, and Brandenburg have subsequently grown up."\* The area of the country of the Gundapurs in the Dera Ismáil Khan District is 462 square miles. This tribe, it will be remembered, still holds common lands on 36,000 shares.

Amongst the Esquimaux fishing villages "the vestiges of a larger tribal community, analogous to the Teutonic *pagus*, seem traceable in Dr. Rink's account of the customs of the Greenlanders, although he makes no such suggestion. Animals of great size, especially whales, and game captured in time of great scarcity, were the common property of all the inhabitants of the neighbouring hamlets."†

"It is now clearly established that in Scotland, just as in Ireland, the soil was once the property of the clan or *sept*."‡

In Holland "the *mark* was the whole territory belonging to the tribe, or to a group of families in the tribe."§

In Belgium, at Louvain, the transfer of allodial lands by surrender through the mayor is regarded by M. de Lavaleye as "evidently a relic of the primitive period, when the chief of the commune presided over the partition, and distributed to each member his share in the communal domain."||

I have not, of course, the opportunity of verifying independently these various statements. But, taking them for granted at secondhand, they appear consistent with the theory of the development of property in the Punjab here put forward.

Throughout this paper, and indeed in the compilation contained in the present and following Volumes, I have designedly

\* "Primitive Property," pp. 104-5.

† Article by Mr. Cliffe Leslie in the "Academy," January 17th, 1876, quoted in "Primitive Property," p. 217.

‡ "Primitive Property," p. 261.

§ Ibid., p. 282.

|| Ibid., pp. 303-4.

abstained from entering upon the analogies between the history of the Punjab during the last two hundred years and the rise of feudalism. To that subject belong, amongst other matters, the conjunction of inferior and superior proprietary rights in the village commune, the whole question of tenant right, the origin of the Sikh aristocracy and the Sikh *misl*, the consolidation of the dominion of Ranjít Singh, and the influence of British settlements and British courts of justice. A separate essay is here needed, for which, as I have said, I am not prepared, and which would have an historical rather than a practical conclusion, because we have fixed the position of the Sikh aristocracy, and have solved the most intricate question that arose out of the confusion of rights in the soil by the passing of the Punjab Tenancy Act, twelve years ago. But several centuries before the time of Charles the Great we find tribes migrating over Europe much as they have immigrated into the Punjab during the last three hundred years. The Burgundians move from the coast of the Baltic to the Rhone; the Lombards, Suevi, and Vandals leave the same region and the country south of Denmark for Italy, the west of Spain, the south of Spain, and the north of Africa. The Franks cross the Rhine, spreading from Germany to the north and east of France; the Visigoths found a kingdom in Spain, and the Ostrogoths in Italy. Now, I am not in a position to say that wherever these migrations spread, their village communities, or the traces of them, have become discernible. But in Germany, one great theatre in which this drama of change was enacted, we have indisputable relics of the village system; and in another, France, the house community, which the theory applicable to the Punjab would suggest to have ultimately sprung out of the village and the tribe, survived "from the earliest days of civilisation up to a modern date."\*

There is no feature of Roman law better known than its system of agnatic kinship. In describing family relationship in the Gurgaon District, Mr. Wilson (*infra*, p. 12) points out that it differs from the Roman *agnatio* only in the circumstance that by the Roman law females related through males only were included amongst the agnates,† whereas by the Gurgaon custom females can never inherit. It must, however, be remembered that, under Roman law, when a woman was married by any one of the three early

\* "Primitive Property," p. 209.

† For a description of *agnatio*, see below, page 71.

forms, that is by the religious ceremony of *confarreatio*, by *coemptio*, or fictitious sale, and by *usus*, or cohabitation unbroken by absence of three nights in the year,\* she passed out of the power of her father into that of her husband. She became a member of another family, and the change was not emancipation, because it was merely the substitution of the authority of the father of a future group of agnates for the authority of the father of an existing group. Even at the date of the Twelve Tables it was evidently considered an advantage to the woman to escape this marital subjection, inasmuch as they provided the means whereby it might be avoided. In the time of Justinian the woman never passed into the power of the husband, and the whole distinction of the effect of the different modes of marriage on the position of the wife had long been obsolete. Now if, following this clue, we endeavour to restore the Roman agnatic group, as it must have existed when the older forms of marriage were fully operative, we find that married daughters must have been excluded from it. The reason of this is plain. No one could be under two distinct *patriæ potestates* at the same time.† The daughter ceased to be regarded as the daughter of her father by blood, and was legally deemed the daughter of her husband. The limits of the primitive relationship coincided with the limits of the paternal power. The married daughter must have been an agnate in the family of her husband, not in the family wherein she was born. Some consequences of this principle lasted long after the discontinuance of the old forms of marriage, because even when the woman did not come under the *patria potestas* of her husband, the children of the union did so. They were agnates in the family of their own father, and were related to the family of their mother only by *cognatio*. Hence the famous maxim, “*Mulier familie suæ et caput et finis est.*”‡ A woman could not continue her original family, though she might be the mother of a fresh family in the group into which she married.

Now, what is the reason why the woman should thus end the branch in the family tree? Why was the succession to the property of an intestate limited to the male line till first the *prætor*, and afterwards the legislation of the Emperors, relaxed the rules against the succession of those who

\* Sandars' "Justinian," pp. 34, 35, 100, 101 and 104.

† "Ancient Law," p. 150.

‡ Sandars' "Justinian," p. 103; "Ancient Law," p. 148.

could claim through females only? It may be said because the agnatic group was under the *patria potestas*, the father's power, or would have been under such power had the ancestor exercising it lived long enough. But this merely defers the difficulty. Why was the early\* and intermediary Roman law hostile to the succession of those related through females? Why was the authority of the father limited to the agnatic group? Why should it not have extended to the cognates? What, in short, was the principle of this particular form of family organisation? The riddle is solved if we suppose the primitive Roman family to have taken shape in tribes that had settled in village communities, and to have retained much of the character thus stamped upon it long after the village had disappeared. In the Punjab, where women do not transmit the right of succession to village land, this is because they marry outsiders; and outsiders are those who are not of the same family or clan with the proprietary body of the village where the married woman was born. The exclusion of females from the succession is the means of keeping the land within the clan and within the village. Now, we know that Italy was peopled by various tribes; and a great authority, Mr. Freeman,† does not hesitate to say of Rome herself that no fact, in what may be called mythical history, seems better established than that the Eternal City grew out of the union of two or more village communities.

I am now in a position to give some answer to the question with which I set out. Neither the theory of M. de Lavaleye, nor that of Sir Henry Maine, will exactly fit the facts, as I understand them, of this province. But the general order of progress,—the tribe, the village, the joint family,—here asserted, more nearly coincides with the opinion of the former than with that of the latter. M. de Lavaleye certainly seems to think that the commune must necessarily have been formed at some time in the *mark*, or common domain of the clan; and though all such general theories are, of course, to be understood with the reservations I have already indicated, it seems, in connection with his view, to be important to point out that there is a good deal of evidence here which tends to the opposite conclusion. The derivation of several from collective property may hold good without asserting that the village is a necessary phase in such

\* "Justinian," Lib. III., Tit. III.

† "Comparative Politics," p. 106.

development. Besides, one great advantage in the study of the Punjab is, that the growth of severalty within the village may be traced with unusual distinctness. If the village is not a necessary phase, neither also is the house community. We have a close analogy to that institution; but if it exists, it has hitherto escaped notice.

I stated the theory of Sir Henry Maine in his own words and without the context, because the emphasis laid on the weakness of the tie of blood in the village community seemed to me to lead the mind astray from the point which I regard as of the most consequence in the examination of Punjab customary law. It is only because I believe that society is here founded both on the land and on kinship, both of these forming at one and the same time the joint basis of the several groups of tribe, clan and family, that I am able to attempt any theory of tribal custom in this province. It would be possible to collect a good many expressions from the "Lectures on the Early History of Institutions" which would lend colour to the supposition that Sir Henry Maine would not deny the conclusions here limited to a particular field of enquiry. He refers (page 83) to Indian communities placed in a region of which the population has from time immemorial been far denser than in Russia. I have dwelt most on parts of this country which have been inhabited or repopulated within memory. His description of the agrarian organisation of the Irish tribe (pages 92-5) entirely coincides with the doctrine implied throughout this and the preceding paper, that the origin of property is ultimately tribal, if only you go far enough back. "The primary assumption," he says, "is that the whole of the tribal territory belongs to the whole of the tribe, but in fact large portions of it have been permanently appropriated to minor bodies of tribesmen." "Each family which has appropriated a portion of tribe land tends always to expand into an extensive assemblage of kinsmen having equal rights." "Kinship as yet, rather than landed right, knits the members of the Irish groups together" (page 96). And before this (page 88), "the view of society as held together by kinship still survives when it is beginning to be held together by land." All this might be said of the Punjab; but it would be, to my apprehension, an entirely erroneous view of the province to assert that in its village communities the idea of common blood and descent has all but died out. The fact is that Sir Henry Maine has in view a *bhaiachára* village in a long-settled part of India.

His attention is directed, not to the successive stages of the severance of joint rights within the village, but to this circumstance as an ultimate fact; and he states one way, and only one way, in which the village may originate. The historical succession of different types of the village community as a whole is the point that would necessarily most impress itself on the mind of a Punjab officer. Had Sir Henry Maine referred specially to the *zamindári* village, he would doubtless have excepted it from his conclusions.

Similarly, I think the difference of opinion between Sir Henry Maine and M. de Lavaleye is due to each looking at the same chain of events from opposite ends of it. M. de Lavaleye, proceeding as in this outline, starts from the earliest social aggregate, and evolves the village out of the tribe. Sir Henry Maine, though he derives the village from the joint family, evidently reaches this origin by moving in the reverse order from the village in its latest form. The house community thus becomes with both the middle term in the series. But Sir Henry Maine's description of the Irish tribe shows clearly that he does not deny that the family may spring out of the tribe, whilst he all but expressly admits that the joint family may be derived from the village community,—from an organism, in fact, of the kind that the joint family itself, as he would hold, originally generated. "In the developed joint family or village community, as the little society becomes more populous, as the village spreads, as the practice of living in separate dwellings extends, as the land rather than common lineage gets to be regarded as the cement of the brotherhood, each man in his own house practically obtains stringent patriarchal authority over his wife, children and servants. But then, on the other hand, the separated member of the joint family, or the head of the village household, will himself become the root of a new joint brotherhood, unless his children voluntarily dissolve the union after his death" (page 118). Without raising any issue about patriarchal authority, the *patria potestas*, in village communities, it may be said that this description implies that, as the village dissolves, the joint family is one of the new forms which may be assumed by its component materials.

I said that M. de Lavaleye agreed with Mr. Freeman in regarding the clan and the village community as identical. "The clan," says Mr. Freeman,\* "may take many forms.

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\* "Comparative Politics," 1873, p. 102.

It may long keep on the wild independence, the predatory life, the attachment to the hereditary chief of the race, which distinguishes the Celtic clans and septs both in Britain and in Ireland. In a higher stage it may take the shape of the agricultural village community, such as we see it in forms common to the Aryan races, both in the East and West. The two things in short, the clan and the village community, are the same thing, influenced only by those circumstances, geographical or otherwise, which allow one clan or company to adopt a more settled life, while another is driven to linger in, or even to fall back upon, a ruder state of things."

In the Punjab, differing merely in the use of terms from both Mr. Freeman and M. de Lavaleye, we should reserve the expression "clan" for communities ordinarily much larger than the brotherhood of a single village. We should identify it with the *got*, the division of the larger tribe or *kaum*. A *got* may extend over six or seven villages, or even over two hundred, or perhaps more, whilst a single village may be the germ of a new *got*, or may comprise within its circle proprietors of different *gots*. But in the primitive form of the village community of the Punjab all the proprietors would be men either of the same *got*, or of the same family. That is really with us the primary meaning—though it is not the only one—of the well-known phrase, "the village brotherhood." Such a village, it may be said, is the small shoot of an existing clan, or the stock whence a new one may develop. The severing branches of a tree convey best to my mind the way in which tribes separate into villages. But if I wanted an illustration of the manner in which fresh villages grow up after tribes have long taken to agriculture, I should say that they resembled those organisms midway between the vegetable and animal kingdoms that propagate themselves by fission. Out of the parent springs its own image in miniature; and this disengages itself to expand to equal size, and to pursue a similar history.

### SECTION III.

#### THE CHARACTERISTICS OF TRIBAL AND VILLAGE CUSTOM.

THE theory which I have endeavoured to establish in the two preceding sections will, if accepted, give the clue to the interpretation of Punjab customary law. Traditions and observances follow the circumstances of their authors; and the Punjab customs of which I shall speak are those of agriculturists settled in villages, but belonging to tribes and clans, and applying in the interior organisation of the village, ideas of a tribal character; the ideas, I mean, of common descent and of operative blood relationship. I think the people have spontaneously evolved a system which suits the conditions of agriculture without breaking the tie of the clan.

The evidence on which this opinion is founded consists of the decisions of the Chief Court, the "Note" of Messrs. Boulnois and Rattigan, and the abstracts of the tribal records and other papers which are comprised in the compilations in this Volume and the next. It is, therefore, much too bulky to be embodied in the text of this Introduction.

The abstracts of the tribal records seem at first sight incomplete; but I have arranged them so as to show that all the main ethnological divisions of the Punjab have been represented in a greater or less degree of detail. No conception of this province would be more incorrect than that which would assume it to be an homogeneous whole, like a territorial nationality. A nation, in the modern sense, does not exist till the primitive groups of society, constituted by kinship, have become completely obliterated; until the sources of cohesion or repulsion are occupation and rank, not the tribe, the section, or the village. The Punjab is inhabited by races and tribes; and it will have been seen that to the east there are recognisable distinctions between the Delhi territory, the Bhatti territory, the submontane plains, and the Kangra and Simla hill country. Westwards the frontier differs from the rest of the province; and the upper frontier, the home of the Patháns, is often rightly contrasted with the lower frontier, the land of the Beloches. The northern tracts of the several Doabs between the Sutlej and

the Indus present a very general uniformity ; but towards the west tribes gradually become better organised, until the state of society practically conforms to the upper frontier type. And, again, the Southern Punjab, the Multán Division, with its wide deserts and nomad tribes, its newly-settled cultivation and loose aggregates of individual properties artificially combined by deliberate policy, is quite unlike the rich, thickly-peopled tract that stretches in a fertile belt along the base of the Himalaya, fringing those districts where Sikh dominion arose, and which were always the pivot of Sikh power. Broadly, looking at the Punjab from east to west, we have a central country, the Punjab Proper, lying between strips of Hindústan and Afghánistan, whilst from north to south spread three separate regions presenting successive contrasts,—the hill country, the sub-Himalayan belt, and the southern wastes, sparsely redeemed by precarious cultivation, save on the banks of rivers and canals. And, again, in the south and west the population is mainly Muhammadan ; to the east and in Káagra, Hindú ; and the borderland between the creeds was naturally the birthplace, as it is still the home, of the eclectic religion of Gúru Nának.

I said in the Introduction to Volume I that I would attempt to explain why it would be impossible to draw precise lines between the boundaries of various conflicting customs. One reason is, that the different portions of the Punjab above distinguished from each other are not separated by well-defined limits, like the coloured lines in a map. It has been said that the Játs, who are more numerous than any other agricultural tribe, merge on the one side into Rájpúts, and on the other into Afgháns ; and if the Afgháns are held to include the Beloches, this is probably quite true. Yet any such statement only represents a portion of the truth. Though particular tribes may, sometimes, be found to blend with distinct races, the whole country is inhabited by a variety of tribes,—some Hindú, some Sikh, some Muhammadan ; many, whatever their creed, of common race, and each carrying with it, wherever it finds its dwelling-place, something, and often very much, of the common heritage. Such communities, without losing the tradition of common descent, are affected by new physical and social surroundings, and in course of time assume many of the characteristics of their neighbours. But as we move eastwards, we find the tribe often, although by no means always,

losing a fixed territorial delimitation. There is no longer the double tie of a common origin and a common political boundary. This applies, it will be particularly noted, to the tribe as a whole, not to the several clans composing a tribe or race. Centuries of gradual movement and of village-by-village colonisation may, in the parts of the country longest settled, have scattered races and tribes, so that they ramify over the province, not keeping to any one locality. But still one set of tribes prevails in one place or group of districts, and another elsewhere; and the clans have often recognised head-quarters and, many of them, large tracts where they congregate in strength. Besides this, mingled with clans who still hold together, there are large classes, either now completely dispersed, or deriving such community as they retain from the pursuit of like hereditary occupations.

The general truth of these remarks will appear from the examination of the returns of the census of 1868, from the tribal maps of a few of the central districts, and from the Settlement Reports of one or two elsewhere. To begin with Muhammadan divisions and tribes, Sayads and Moghals are found in every district; of Patháns, the vast majority of the Yusafzais are in the Pesháwar District; the Khataks are practically confined to Bannu, Pesháwar and Kohat; except in Kohát, there are scarcely any Bangashes: the chief, almost the exclusive, seat of the Mohmands, Khalíls, Daúdzais and Muhammadzais is Pesháwar. Bannu\* is the country of the Bannuches, the Niázais, the Marwats, the Darvesh Khel Wazírs. In the Dera Ismáil Khan District, where the northern and southern streams of immigration met and blended, the population is more mixed, but the Patháns all through the district are congregated in clans;† and amongst them may be mentioned the Miánkhels, who, with the Marwats, are Lohánis; the Kúndis of Tánk, the Gundapurs of Kuláchi, the Bábars, the Ushteráñas, and the Khetráns of Vahoa. The Kasránis, the Lunds, the Khosas, the Legháris, the Gurchánis, the Drishaks and Mazaris, all Beloch tribes, are entirely or nearly peculiar to the Dera Gházi Khan District. Amongst Muhammadan Rájpúts, the Bhattis are found in all divisions, though in the Deraját, Umballa and Delhi their numbers are insignificant. The Ráwalpindi Division is the country of the Chibs, Janjúas, Tiwáñas and Ghebas; and, with Hazára, of the Ghakkars and Dhunds.

\* "Bannu Settlement Report," p. 15.

† "Dera Ismáil Khan Settlement Report," pp. 42-4.

The Siáls, Kharrals and Wattús are prominent in the Mooltan Division. There are very few Játs in the Pesháwar, Kohát and Shahpur Districts, and few Gújars in Kohát, Sirsa, Shahpur, the Deraját, and the Southern Punjab. Elsewhere these races abound in the plains. There are 613 Ját villages\* and 461 Gújar villages in the Gujrát District, the Gújars, amongst whom the Kathanah clan holds fairly well together, occupying the centre, and the Játs the tract along the Chenáb and on the borders of Shahpur. The riverside Játs are mainly Varaitches. On the boundary of Gujránwala and Lahore there is a strong cluster of Virak Játs. In Gujránwala the Chattahs, Chímas, Hijras, Dhotars, Bhattis and Guráyas, all claiming Rájpút descent, are found in fairly wide blocks, but not all either compact or continuous, their lands interlacing with, or being divided by those of, miscellaneous and other tribes. The same may be said of the Sandhu, Siddhu, Gill, Dhillon and Bhúlar Játs of the Lahore District, and of the Bajwa, Guman and Guráya Rájpúts, and the Awáns of Siálkot. The Muhammadan Meos belong to Gurgaon; the Ahírs to Gurgaon, Delhi and Rohtak; and the Hindú Kanets and Girths to Kángra. But elsewhere in the eastern divisions, if we except the Cliángs of Hoshiárpur, Kángra and Gurdáspur, the census report does not show the conspicuous preponderance of particular tribes in particular localities that is so striking a feature in the divisional returns of the frontier, Ráwalpindi and Mooltan. Lastly, amongst widely-scattered classes and tribes may be enumerated Musalmán Khojahs and Kashmíris, and, of Hindús or Sikhs, Bráhmans, Khatris, Banyas, Aroras, Labáñas, Kambohs and Kaláls.

Now, since the tribe and the clan are the living vehicles of institutions connected with the family and succession, and since the organic structure of such institutions varies with theirs, it is rarely practicable in considering Punjab customary law to lay down that given practices obtain universally amongst all classes, without distinction, inhabiting broad regions demarcated by precise boundaries. Every tribe and every clan is not within a ring-fence. Even where the proprietors of land are of the same tribe or clan over a wide extent of country, intermixed with them are traders, servants, priests, a variety of miscellaneous classes, whose conduct may be governed by different rules. The tribes whose customs are

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\* "Gujrát Settlement Report," 1874, p. 19.

to be formulated must be selected from the body of the population; and any general propositions, if laid down in any absolute sense, must be limited to the particular tribes whose customs are declared. Some customs, especially those connected with riverain law, irrigation, and agricultural improvement, are, no doubt, characteristically local; but these are customs which either do not depend upon any tribal principle, or, if they do so depend, are found in parts of the country where the local contiguity of the tribe is marked. For the rest, all that can be done is, to note the part of the province, to leave which will be to feel the at first almost imperceptible growth of some ethnic change. You cannot, for instance, say, 'here ends the Punjab proper and begins the Mooltan country'; or, 'here Hindústan stops, and we have come to the Punjab.' The demarcation is shaded, not abrupt; the several tints are fused where they join, and pass only further on into a fresh determinate colour. And this is to be expected if we suppose the province to have been peopled by Afghán and Beloch immigrations on the north-west and south-west; to have received, amongst an ancient Hindú population, an accession of Játs on the south and east, and to hold, amid the hills and valleys of the Himalaya and in the neighbourhood of the Aravalli chain, races perhaps older than any authentic Hindú tradition.

Interesting as would be the attempt to characterise the leading distinctive features of the several broadly different regions, I cannot at present enter on any further detail than has already been given. The officers who may read this work will bring to its perusal a full consciousness of the diversity of situations in which rules of customary law, often practically indentical, have grown up, or, where already existing, have outlasted religious and political changes. Briefly, it will have been seen that on the frontier we may study, in its greatest perfection, the undisintegrated tribe: the Eastern and the Central Punjab form the special home of the village-community, nowhere to be observed in fuller vigour than along the edge of the Gangetic river system, near the battle-fields of historic India, where Moghal, Duráni, Sikh, Mahratta and British sought, or lost, or won dominion. The Southern Punjab and the mountains and valleys of the Kánpur District,—the one country a level desert, traversed by roving tribes, drawn to settled cultivation only on the fringe of the waste where water is to be had; the

other a broken Himalayan upland, admitting tillage here, where precipice and peak, and there, where forest and glacier and perpetual snow, do not forbid it,—have this in common, that in both tracts the village-community has, it may be said, been instituted by order of Government during the last thirty years. In parts of Mooltan, and probably also of Dera Gházi Khan, a village system is discernible; but in Kángra proper, if the true communal village ever existed, its traces were obliterated by centuries of the personal rule of Hindú Rájas. Alike in the Mooltan Division, in Dera Gházi Khan, and in Kángra, the revenue settlement is founded on a joint village responsibility, directly and artificially imposed. I should add that Kúlú, Láhoul and Spiti, more especially the two last, are not in the same category as the Kángra valley. Láhoul and Spiti are Tibetan countries: in one of these, Spiti, we find primogeniture, and in both the Tibetan polyandry.

There is nothing in the extracts I have made which relates to the Bhatti territory, now the Sirsa District. I have referred to it in the preceding section, and I might have introduced below a few notes from the Settlement Report of 1863; but as the district will now be settled by Mr. Wilson, it seemed best to await the result of his inquiries. With this exception, I think every well-defined ethnical province in the Punjab is represented in this collection. The Gurgaon and Rohtak papers illustrate the Delhi territory. Mr. J. B. Lyall's report supplies particulars for Kángra, Kúlú, Spiti and Láhoul. More or less is inserted about Lahore, Gujránwala, Siálkot, Gujrát, all districts of the Central Punjab. In Jhelum, Shahpur and Ráwalpindi we have an intermediate land, touching at its extremities the Central Punjab, the Southern Punjab, and the frontier; and on these three districts there are a few notes. The frontier itself, as will already have been seen, is fully dealt with. For the Southern Punjab there is the Memorandum by Mr. Roe on Mooltan, to which my own comparatively meagre account of Dera Gházi Khan is a partial supplement.

I have here been led to dwell upon the ethnographical diversity of the Punjab by two different considerations. First, because it is important to note the great multitude of local influences which would have to be borne in mind in any attempt to systematise the customary law of the province. It seems obvious that this could only be effected step by step. Complete uniformity may be an ideal towards which we may slowly work, but it cannot be attained by a

single effort. And secondly, because the next remark I have to make might, at first sight, appear paradoxical. The impression which I have derived from such attention as I have had the opportunity of giving to the subject is, that where similar rural conditions exist the principles of Punjab customary law are fairly uniform. Details will vary from village to village, with the tribe of the proprietor, with their marriage practices, with the degree in which communal has been superseded by separate property, and with other general facts. But a broad and tolerably consistent outline of the whole subject is, I think, discernible amid its perplexing variety—an outline that could not indeed be safely fitted to particular localities so as to constitute that local demarcation of usage which, I admit, cannot be precisely attained, but which may serve to illustrate and connect customary rules, some of which are acted on in one place, and some in another. In making this assertion I do not wish it to be supposed that I have forgotten how exceedingly diverse are the forms of local circumstance.

From the scope of any such observation the Kánpur District, where the conditions of proprietary enjoyment and family-life are quite exceptional, must be excluded. It must, moreover, be limited to the matters with which the papers in this Volume deal, and must be accepted, if at all, with due allowance for the influence in the west and south of the Muhammadan law, for the looser coherence, in some places, of the village commune, and in others for the inchoate and unsettled rules of practice of rude frontier tribes. By a kind of natural selection, certain points continually repeat themselves in the tribal records. Authority, no doubt, has directed the inquiries towards marriage, succession, adoption, and transfer of property; but it was, I think, the coincidence, both in the popular and in the official mind, of a sense of the special importance of these subjects that gave them their frequent and permanent place in the district Codes. If the rules had not been consistent with the requirements of the case, they would certainly have been sometimes departed from. As it is, I have in general confined the extracts to these topics; and it is to these that I limit my assertion. Here and there, in the cases of Shahpur, Dera Gházi Khan and Mooltan, I have admitted other matter, for reasons given in the text.

That, notwithstanding differences of race and creed and degree of tribal cohesion, Punjab usage should on many points

exhibit an identity remarkable, because it might be unexpected, is a circumstance which can only be explained by the presence in the existing social state of the mass of the people of elements able to resist the effects of specialisation and variety. These I conceive to consist in the strength of blood relationship, real or supposed, and if we refer only to the long inhabited plains of the Punjab proper, in a similar social history. Where society, taking the form of a settled population, has left the pastoral or merely predatory stage without losing the tribal or clannish bond, which can alone hold together large communities unpossessed of any fixed habitation, there we ought to find some customs common to large multitudes. There is a great difference between the local tribe of the frontier, with its known leader or council, and the village clans of the Central Punjab, still acknowledging a common tribal name; but, in all cases of actual cultivating settlement, where there are the common features of agricultural occupation and what is commonly called caste, but should often be more properly described as tribal connection, it is not surprising that the people, notwithstanding differences of race and religion, should generally deal with the great subjects constituting the more vital and solid body of the provincial customary law on principles fundamentally alike, though leading to different results according to the different degrees of tribal cohesion, and of proprietary disintegration. The principles of customary law applicable to the composition of the family, the mode of succeeding to the enjoyment of land, and the limitations on its tenure and transfer, have, no doubt, been much more consistently applied, both by the people and by the Courts, in some cases than in others; but nevertheless, as already said, I think it is, even now, possible to formulate them, at least in a preliminary way.

But before attempting this I should allude to the two circumstances which mainly contribute to this possibility. The first is due to Sir Henry Maine, who has taught us to interpret Aryan institutions by comparing the East and the West. Taken with the theory of proprietary development and its consequences, it is the Roman system of agnatic kinship that supplies the clue to Punjab customary law. For the second, the credit belongs to Mr. Wilson, late Assistant Settlement Officer, Gurgaon. Nearly five years ago I drew up the series of Questions, now contained in a revised form in Volume III, with the design, amongst other things, of

eliciting materials for generalisation on the usages of the province. I wish to express my gratitude to Mr. Wilson for the patience, insight and skill with which he has employed a necessarily imperfect instrument. His excellent paper on Gurgaon would, almost by itself, suffice to suggest a scientific hypothesis. The Gurgaon District has been under British rule since 1803 *i.* has been part of the Punjab only since the spring of 1858; it is far removed from the hills, and is on the extreme east away from the frontier. But it is a country of strong village communities; and the clan lives there in the fullest vigour. It is a fair illustration of the state of things in settled agricultural tracts of the Punjab, wherever the village and the clan are vitally compact. I shall therefore follow Mr. Wilson very closely; but I shall put forward a theory, intended only as a working hypothesis, to suggest the course of future investigation, in a somewhat different order of arrangement.

The question I shall try to answer may be thus expressed. 'Suppose normal development to have been uninterrupted, either by recent colonisation under official guidance, or by the desire of the landholders to lighten the fiscal burden by bringing in strangers to till the soil, or, again, by the decisions of the Courts of justice, or lastly, by any specially strong infusion of Muhammadan ideas, what would originally have been the systematised customary law of a typical Punjab village?' It must be postulated that all the proprietors of the village should be of the same clan; but they might hold either in shares, all produce being brought into the common stock and divided, or sections of the brotherhood might jointly possess separate plots in the village area. I exclude, for obvious reasons, the very common case of each family having acquired a specific right over determinate fields, the waste alone being still held in joint ownership.

Such a community, with a strong sense of their family origin and an hereditary preference for members of the wider tribe, which includes their own clan, would naturally be endogamous from one point of view, and exogamous from another. They would marry their daughters outside the closely-drawn limits of the clan, but within the looser, but still remembered, circle of the tribe or race of origin. As ancestral shares would be remembered, the sense that the clan had expanded from the family of a common ancestor would be keenly felt. I do not enquire here why marriage within the expanded family should be forbidden. The answer

to that question would take us back to phases of development earlier than any with which we ordinarily have to do. The villagers, having long outgrown the primitive conditions when male parentage is quite uncertain, trained in the past by warfare and toil to depend on the male kindred, would assign property, now much more in lands than in cattle, to the hands best able to hold it safely and to use it to advantage, that is, to those of the heirs determined by the system of agnatic kinship, or of relationship exclusively through males. This would be the more necessary, as, the daughters marrying outside the clan, their children would belong to another stock. Women would be under a perpetual tutelage, under the guardianship either of their husbands, or, failing these, of the nearest agnates\* by blood or marriage. The marriage of women would be universal, for a deeply-implanted distrust of female chastity, not improbably in part the consequence of that seclusion or subordination of women which facilitated the certainty of male parentage, would forbid celibacy to adult females. By marriage, sisters and daughters would be provided for in another clan ; there would be no need to give them part of the village patrimony ; and, indeed, to do so would be to bring into the community an outsider of a different village and different section, who might be an unwelcome intruder, or possibly, in former days, an open enemy, merely reconciled for the time by the connection, even though he also were a Rángar or Ját.

On the death of a proprietor his holding would devolve on all his sons, usually in equal shares : on the predecease of one or more of them, the grandsons would take *per stirpes*, each set receiving the share which would have gone to the son had he outlived his father. In the absence of sons the widow would take a life-interest, without power to alienate, save on great necessity, if the kinsmen did not come to her

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\* I repeat, for facility of reference, Sir Henry Maine's description of agnatic kinship, which is also quoted by Messrs. Boulnois and Rattigan :—“A table of cognates is, of course, formed by taking each lineal ancestor in turn, and including all his descendants of both sexes in the tabular view. If then, in tracing the various branches of such a genealogical table or tree, we stop wherever we come to the name of a female, and pursue that particular branch or ramification no further, all who remain after the descendants of women have been excluded are agnates, and their connexion together is agnatic relationship. I dwell a little on the process which is practically followed in separating them from the cognates, because it explains a memorable legal maxim, *Mulier est finis familiæ*—a woman is the terminus of the family. A female name closes the branch or twig of the genealogy in which it occurs. None of the descendants of a female are included in the primitive notion of family relationship. If the system of archaic law at which we are looking be one which admits adoption, we must add to the agnates thus obtained all persons, male or female, who have been brought into the family by the artificial extension of its boundaries. But the descendants of such persons will only be agnates if they satisfy the conditions which have just been described.” “Maine's Ancient Law,” 1863, p. 148.

aid, and terminable either by her notorious unchastity, as, for example, by her elopement, or by her re-marriage. In either case the land might pass practically into the possession of some one outside the village or clan. Amongst strict Hindús the widow would not by custom marry again: in olden days she would often have perished on her husband's funeral pyre. Often, especially in Ját communities, she would become, by a sort of succession, the wife of her deceased husband's brother, little, if any, ceremony being used. I say 'by a sort of succession' because the property is divided amongst the sons or agnates, because women are regarded as a valuable possession, because they pass completely into the clan of the husband, and because, in any distribution, it is quite obvious that they could not be assigned to their own sons.

Throughout the whole scheme the right of representation would be consistently applied, even in the succession of others than the direct descendants of the deceased; the sons of a deceased agnate taking the share he would have had if alive. This would be the necessary consequence of the theory that the estate was always either actually held or potentially distributable according to ancestral shares. And the right would even in a manner be extended to include the widow of a deceased agnate without sons, who might have the usual life-interest in the share that would have fallen to her husband. No distinction would be made between associated or disassociated sons or brethren, for the prevailing assumption would be that near kinsmen were joint in estate. Nor would there be any practical need to import this refinement, the growth of an historically later epoch in law.

But, sometimes, the distribution amongst sons would not be equal. If there were in the village a family which had once been that of a tribal chief the eldest son would probably find his hereditary pre-eminence in some way recognised on succession. Rarely he would, for other reasons, get an extra share. More often, as is well known, the inheritance would be distributed according to the number of mothers, the sons, however many, of one mother taking a share equal to the aggregate given to the sons, however few, of another. Again,—as an offshoot from this now inequitable system,—amongst brothers, the brother of the whole blood might, perhaps, exclude his brother by the same father but by a different mother. I think however, for reasons I shall adduce further on, that the two last rules are only organically

connected with the scheme of agnatic village succession by way of survival. They seem to me to belong to an older order of things, prior to the establishment of agnatic kinship.

Although the position of women which the scheme indicates is not a high one, the life-interest they frequently enjoy under guardianship of the agnates is a very distinct testimony to a considerable advance in civilization. Some tribes, especially in the wilder parts of the country, would deny the widow more than maintenance; but there is nothing in her restricted tenure which conflicts in any way with the system of the village or clan. She belongs to the brotherhood; and the recognition of her right is humane and, so far as it goes, unselfish. But it would be a necessary rule that whenever a woman took land in any capacity, she must have no more than the limited interest I have described, otherwise, whether by her marriage or re-marriage, or misbehaviour, or favour for a stranger, the land might pass out of the clan or village. Ordinarily, as already explained, it would only be a widow who could have such an interest, not necessarily the widow of the person deceased, but either such a widow or the wife of a relative predeceasing him,—as, for example, his brother or cousin. Theoretically, there is only this place in the scheme for the succession of unmarried daughters; in the absence of near male kindred, they might take an interest in the property till marriage. They would, however, be married whilst still of tender years; so, whilst they still belonged to the clan, their maintenance and the provision of their marriage expenses would really be all they would require.

The exclusion of females would of course carry with it the exclusion of their descendants. No sister's son or daughter's son could inherit: they would not be fellow clansmen. But the sense of relationship by marriage with families of other clans would by no means be wholly wanting. It would exist for social purposes; there would be special names for the nearer relatives through the wife or mother; and the tie might even generate prohibited decrees. It is for the purpose of succession to landed property that this sort of relationship would be consistently ignored.

Wills, the product of a much later stage in juridical history, would be entirely unknown. Generally speaking, there would be no need to regulate the succession, the simple rule that the estate devolves on the sons or the nearest agnates being sufficient. But the two expedients to which

resort would be had in special cases would be adoption and gift. Whatever was done the near kin, who would be excluded by the adopted son, or the recipient of the gift, should give their consent. Only a man who had no son would be allowed to adopt one; and this he might do without any ceremony, though the occasion should be public. The person adopted might be of any age, and married or unmarried. But he should, of course, belong to the clan, and the nearer his relationship to his adoptive father the less, looking to the practice of holding family property in common, would be the danger of the adoption injuring the expectations of the other kinsmen. The much-debated question, whether a man may adopt a daughter's or sister's son, would therefore, in a village such as I have supposed, be answered in the negative. But if the clan were not exogamous, if marriages of near affinity within the clan were permitted as is often the case amongst Muhammadans, then the conditions, not only of adoption, but also of succession, would be changed. Sisters, daughters, and their descendants would not be outsiders. A sister's or daughter's son might be a rightful heir, as himself the nearest male related through a male; and a sister's or daughter's son might be adopted.

Although the community would not tolerate the property in any of their land being vested in a member of another clan resident in another village, they might consent, under certain circumstances, to recruit their cultivating strength from without. They might settle persons of another clan, but very likely connected with them by marriage, within their area, if they needed, for subsistence or to pay the revenue, some aid in breaking up the waste. Such a class might, from one point of view, be described as tenants paying no rent,—paying, that is, only the Government revenue and the extra items calculated upon it. They would not, however, usually share in the common land, or take part in the management of the village. But the process I refer to is quite distinct from the mere entertainment of labourers, or the location of tenants-at-will; nor is the relation established by it properly denoted by such a word as 'tenancy': on the contrary, the status assigned to the incomer is very nearly equal to that of the original proprietor. The results under our system have been very various. Such classes have sometimes been treated as inferior proprietors, sometimes as occupancy tenants; sometimes they have ousted the original proprietor, and

become full proprietors themselves ; occasionally they have lost all the benefit of their former position, and sunk to the level of the tenant-at-will. I have assumed that in the typical village there would be no such outsiders. I merely wish here to point to the fact that the members of the village-community, as a corporation may adopt a body of outsiders as very nearly on an equality with themselves; that is to say, the almost absolute rule against the admission of an outsider may, for sufficient reasons, be relaxed. Analogous to the above process is a kind of adoption permissible to an individual landholder. If he have no son, natural or adopted, he may be allowed to bring his son-in-law into the village. His daughter and her husband will come and live in his house and attend on him. He will treat the son-in-law in all respects as a son ; and the latter will cultivate his fields for him, and, when old age supervenes, take charge of his property. Under these circumstances, the son-in-law may be accepted as the heir ; and it would be only when a son-in-law had thus been adopted into the clan and village that he could inherit any of the village lands. He would be the heir because he had ceased to be an outsider. But, again, where the clan was endogamous, there would be a greater facility for this practice, as it is called, of *ghar jawai*. The son-in-law would be already of the same clan, and if he were of the same village his reception in his father-in-law's house would be tantamount to the adoption of an agnate.

As regards gifts and all absolute transfers of immoveable property, the rule would be the simple one, that the consent should be first obtained of those agnates who would, but for the transfer, inherit. The propriety of gifts of land to daughters or sisters or relatives through females would mainly depend on whether or no the land would thereby pass to a man of another clan and village. In exogamous clans there would be a strong feeling against such gifts ; but where endogamy prevailed within the clan they might be unobjectionable. In a village such as I have described, the law of pre-emption would be strictly adhered to in sales ; and a man would not be allowed to make a gift of land unless he had neither an adopted nor a natural son. Even then he might not make a gift to any relative through a female, still less to a total stranger. A small grant in charity to the village temple or religious rest-house or religious mendicant would be a different affair ; anybody might go so far, for he would not by this interfere with the village economy.

All the rules regarding transfer of property by sale and gift, as also regarding adoption, would be the direct consequences of the assumption that all members of the village community originally held their lands in common. Obviously, wherever this was still the fact, no alienation could be made; no fresh sharer could be brought in without the consent of all the village proprietors. The amount of the produce to be shared would be affected by the accession to their number. No man would have undivided property to give away. Then, as severalty proceeded, the same argument would apply to each joint group; and this explains why the circle of kindred, who would have a right of veto, would be wider or narrower in different instances. That circle should be co-extensive at least with the group still actually holding in common, whether it were a joint family, a *taraf*, or *patti*, or a whole village. But the circle would not necessarily be limited to any of the smaller groups: the village or the *patti*, as the case might be, might not have surrendered its joint interest either in respect to forbidding alienations of any kind, or to admitting outsiders by adoption. The presumption might be against its having done so, and the fact, if otherwise, should be made out from the practice of the community, which the village records would show.

The whole of the law of the special property of women would be omitted from the scheme. It would be quite unnecessary, for, on determination of the woman's life-interest, the property would pass to the nearest agnates, whose possession she would merely defer; and during her husband's life-time, the woman would have no separate property at all. Partition would demand no special rules. It would always precisely resemble the distribution of the estate of an intestate, and the sons or other agnates would share accordingly. If a father made partition of his lands in his life-time he would assign his sons the shares they would have taken at his death. If he reserved a share for himself this would be divided on his death according to the usual rules of inheritance, whether or no any son remained joint with him. In the same way, particular provisions as to guardianship would be superfluous. The tutelage of women would be perpetual; the guardianship of minors would be the duty of the nearest agnates, in the order in which they would take the estate. Not a single sacerdotal reason would be either given for any rule, or, in fact, with one slight exception, influence any practice. The whole system would be founded exclusively on the practical necessities of the case.

Save for small grants to religious persons or places of the village by way of alms, there would never be any motive but a secular one.

As regards the whole set of rules which I have abridged it may be said that the general connection between them is this. They secure the common interests of a body of clansmen agnatically related to each other, in village lands, which provide the subsistence of the group, and must not leave its possession. Where usage conflicts, as it exceedingly often does, on matters of detail, the reason lies, either in the decadence of this type, because family feeling has been relaxed, or severalty has broken up the village, or Muhammadan law has dominated custom; or, on the other hand, the type being maintained, in the divergent rule followed as to marriage within or marriage outside the clan. This view explains at once the similitude and the diversity of Punjab custom; and, if accepted independently as an empirical observation, it would go to confirm the theory, from which it has here been deductively arrived at, that the tie of blood has not superseded but co-operates with the tie of the land.

Now, it will have been noted that this account of Punjab customary law does not relate to any specific tribe, or any specific locality or village, still less does it relate to all tribes and all villages, not only because no organism, whether individual or corporate, is typically perfect throughout, but also because on all sides transition is in progress. In every district the original social combinations of tribe, clan and village will be found in varying stages of reconstruction into later forms. It cannot be too prominently stated that I pretend to offer nothing but a theory. In an agricultural population, which cannot now be less than ten millions, it is impracticable to exhaust the facts; and even had I had time to examine vernacular documents in addition to the settlement reports and the Punjab Record, it would not have been possible to go beyond a theoretical statement of what the custom probably would be under given conditions. This is what I here mean by a theory of the subject; and I do not see how it could be exhibited in any general view by any other method. The only alternative would be a series of categorical propositions that in such and such a place, amongst such and such classes, particular customs prevail; and this is supplied, so far as the information at hand suffices, in the body of this Volume. To connect these scattered indications of indigenous practice some theory is indispensable.

I will not say positively that I do not expect the Courts of justice will derive any aid from statements made primarily with the view of furthering extra-judicial enquiry in the settlement department. But I should be the last to suggest that particular judicial cases should be decided on the strength of any rule in the summary presented above. What is the custom of any given case is a question of fact, which must be determined in the usual manner. It does, however, seem to me most important that the Courts should have a decided opinion on the historical order of succession of the forms of society and of proprietary right with which we have to deal in this province. The older any form of society is, be it the tribe, or the village, or the joint family, the stronger the presumption that a rule of custom in accordance with that form possesses immemorial antiquity. The rule, whatever it be, that tends to preserve tribal cohesion, community of interest in the village, and the integrity of the family, must, if the theory of the progress from communal to several rights be sound, always have the weight of past practice in its favour: its converse is, by the hypothesis, a novelty; it may be a novelty of long standing, but still an innovation on an older state of things. The onus of proof should lie on those who allege it; and it should be supported by adequate evidence. The theory of Punjab customary law which I have ventured to put forward starts from the conclusion, already defended at length, that kinship and the land combine to determine and regulate the form and practice of our communities. If this principle is correct, the Courts would have further to consider whether any particular rule forms a legitimate deduction from it. The principle may be sound, but in the particular instance the deduction may have been wrongly made. If, however, the principle be admitted, and the deduction be acknowledged to be right, then a presumption in favour of the antiquity of the rule has been fairly established. But antiquity is not the only point to be considered. The custom must be reasonable and continuous; so that another question of equal importance is whether the rule subserves its original purpose. To uphold a survival, which has no longer any sufficient reason for existence, which society has outgrown, and which is probably, from its mere uselessness, of intermittent occurrence, and to do this solely on the ground of its antiquity is not to administer justice, but to commit an antiquarian ineptitude.

The value of the preliminary theory which I have ven-

tured to frame must necessarily depend upon the extent to which it satisfies the conditions of a sound hypothesis. The communal origin of property was first assumed, as being sufficiently established by the wide investigations of others in comparative jurisprudence, without any special reference to Punjab customary law. The tribal origin of both village and several property was then shown, first, to be consistent with the facts in those parts of the province where settlement is most recent and where the operation of natural causes has been least disturbed by official or political influences; secondly, it was found to accord with a law of wider application than that taken for granted,—with the doctrine, I mean, of evolution; and, thirdly, evidence was adduced of its agreement with facts ascertained in other countries, with some matters of general history, and with others of notoriety in this province. It was then inferred from the tribal origin of property that kinship still operates to regulate its enjoyment; and this inference was supported from the returns of tenures held direct from Government. Next the inference has been applied to the hypothetical case of a single village, and various rules of customary law have been shown to harmonise with it. Two steps remain to be taken. I shall endeavour to prove that a sufficient number of these rules are in actual operation to warrant the acceptance of the sketch as a whole; and, secondly, I shall point out that the theory, if adopted, would explain more than one problem connected with the general character of customary law which, without it, would remain obscure.

It will be at once seen by reference to Mr. Wilson's Preface to his Code of Gurgaon Custom that the rules in question generally prevail in the district to which that Code relates. I shall not therefore particularise the points there ascertained, but shall look to facts found elsewhere by judicial or other inquiry.

Prohibitions against marriage founded on the agnatic clan exist in Rohtak (*infra*, page 174), Lahore (page 194), Gujránwala (page 199), and probably Ráwlpindi (page 218); on the other hand, marriages of close affinity within the clan occur in other parts of Gujránwala (page 200), in Pesháwar (page 228), and in Dera Gházi Khan (Settlement Report, paragraph 186).

"It is found," say Messrs. Boulnois and Rattigan (page 72), "that custom excludes females and their offspring from the succession with varying degrees of strict-

ness. As a rule, daughters and their sons, as well as sisters and their sons, are excluded by near male collaterals." Evidence of the system of succession to land in accordance with agnatic kinship, in its primitive form, including the complete exclusion of females when married, and especially, in some cases, if the marriage be out of the clan, is traceable in Rohtak (page 177), Kángra Proper (page 184), Lahore (page 195), Gujránwala (page 200), Siálkot (page 204), Gujrát (page 209), Jhelum (page 212), Shahpur (page 215), Ráwlpindi (page 217), Hazára (page 221), Pesháwar (page 233), Bannu (page 239), Dera Ismail Khan (page 247), Dera Gházi Khan (page 259), and Mooltan (page 271).

The perpetual tutelage of woman is practically asserted by Messrs. Boulnois and Rattigan (page 115), as a fact generally obtaining in the Punjab. The Chief Court have held that sons, by general custom, inherit *per capita*, and that it lies upon the parties alleging the special custom of *chúndavand*\* to establish it (No. 101, Punjab Record, 1879). They have also found that there is among Játs a customary right of representation which extends to collateral as well as lineal succession (No. 91, Punjab Record, 1879); that Muhammadan widows are entitled to a life-interest without power of alienation save for necessity (No. 5, Punjab Record, 1868); and that the custom for a childless village landholder to take a relation into his house in infancy, and, bringing him up as his son, to render him his heir and successor, as if adopted in the manner known among Hindus, is a general village custom with both Hindus and Muhammadans (No. 54, Punjab Record, 1874).

Messrs. Boulnois and Rattigan remark (page 67) that the Punjab Courts generally consider traditional rules of custom regarding inheritance without those explanations of a spiritual character which have been applied in other parts of India; that the true will is foreign to the indigenous system of the country (page 86); and that in village communities such a thing as a woman's *peculium*, or separate property, rarely exists (page 115). They also quote (page 124), with apparent approval, a judgment in which it was said that, in the Punjab, association and disassociation

\* As this word will often occur in this Volume I may here explain its origin. *Pagvand* is a word used where an estate is distributed in equal shares amongst the sons, from *pag* a turban, and corresponds exactly to the phrase *per capita*. *Chúndavand* is from *chúnda*, which means the hair braided on the top of the head, and is applied where the division is governed by the number of mothers; the sons, however few, by one wife, take a share equal to that of the sons, however many, by another.

of brethren do not operate with so much force in controlling the rights of inheritance as they have been supposed to do elsewhere ; that, in fact, the customary law, which here widely prevails, does not always recognise any preferential right in an associated son, over a son not associated, to inherit ancestral estate. "The idea," they say (page 82), "of an absolute power of alienation in one member of the family is not found in customary law." "Beyond the immediate circle of the family, kindred are often found anxious to prevent alienation ; and it is often a question within what degree they are regarded by customary law as entitled to interfere."

Now, assuming that the above points may be regarded as established, they fill up so much of the outline I have drawn that the rest of it might, perhaps, be fairly assumed. But I by no means rely exclusively on any such hypothetical, though legitimate, reasoning. I think the perusal of the statements of custom in different districts will amply bear out what has been said ; and in this connection some specific references will be found in a footnote.\*

The position of unmarried daughters is a good test of the substantial soundness of the scheme ; and there are numerous instances of that taking the precise character which the scheme postulates. In Kángra Proper an orphan daughter has an interest similar to that of a widow so long as she remains unmarried (page 184) ; in Siálkot (page 204) unmarried daughters, in default of male issue, may hold the whole property on a life tenure until marriage ; in Ráwál-pindi, in no case could a daughter inherit if she married out of the family (page 217) ; in Hazára (page 222) the claims of an unmarried daughter stand on the same footing as those of a widow ; in Bannu (page 239) a daughter,

\* The widow's interest, with substantially similar features, occurs in Rohtak (pages 176-178), Kángra Proper (page 184), Kúlú (page 185), Siálkot (page 203), Gujrát (page 208), Jhelum (page 212), Shahpur (page 215), Ráwálpindi (page 218), Hazára (pages 221-222), Pesháwar (page 230), Dera Ismáil Khan (page 246), Multán (pages 272-4). For instances of mere maintenance, see Bannu (pages 236-8), Dera Gházi Khan (pages 257-8).

For *ghar jawái* see Rohtak (page 180), Kúlú (page 186), Gujrát (page 210), Jhelum (page 213).

For *karáo* or *karewa* or *chadar-dalna* marriage, see Rohtak (page 174), Spiti (page 189), Lahore (page 195), Montgomery (page 197).

For adoption, see Rohtak (pages 178-9), Kángra (page 184), Gujránwála (page 199), Siálkot (page 204), Pesháwar (page 233), Multán (page 278). It will be observed that the adopted son loses his right of inheritance in his natural family in Rohtak, Siálkot, Pesháwar and Multán.

As regards *gifts and transfers*, see Spiti (pages 190-1), Siálkot (page 205), Gujrát (page 210), Hazára (page 221), Bannu (page 241).

as a rule, receives no share, but she is generally entitled to an usufructuary interest in half a brother's share until marriage ; and the real meaning is explained to be, that the brothers must maintain her properly till she marries. In Dera Ismáil Khan (page 247) unmarried daughters, like widows, are entitled to maintenance till they are married ; and if they remain unmarried they are entitled to manage the property, and enjoy the income from it for their lives. Married daughters get nothing. Several tribes in Multán say that collateral relatives are excluded by daughters, unless the latter have married into another tribe. Mr. Roe thinks that, in old villages, daughters are excluded by near collaterals, but, save under the like conditions of marriage, not by the more distant ones. Tribes not following the Muhammadan law allow unmarried daughters only maintenance and a marriage portion. But the Shujahábad Muhammadans said that, if such a woman lived all her life with her brothers, she would be entitled to a share, or to succeed them on a life-interest (pages 271-2). The Chief Court (No. 81, Punjab Record, 1879) lately found that by custom, amongst Awáns of the village of Dehwal, in the Khusháb tahsil of the Sháhpur District, where a proprietor dies leaving unmarried daughters but no sons, the daughters succeed to the land, and hold it until their marriage ; but upon their marriage they cease to have any interest in the land, which then passes to the collaterals in the male line.

The last criterion to be applied to the explanation here suggested of Punjab customary law is whether it contributes to the solution of any collateral difficulties. I think it throws light on the means whereby primitive and illiterate people can preserve their customary law for ages without consigning it to the keeping of a special class ; that it indicates cases where the supposed invention of custom is, in fact, merely the application of a familiar system of rules ; that it points to the true relation between Punjab custom and Hindú and Muhammadan law ; and that it supplies a partial answer to the question, why customary law should be particularly full in some departments, and particularly scanty in others.

The Bráhmans are not, in the Punjab, the depositaries of customary law. To ascertain it we must go to the *jirga*, or tribal council, if there be one, or to the elders of the tribe ; and these men are as much laymen as the rest of their kin : they do not form a class apart ; there is no professional body

in the least degree resembling the Irish Brehons ; none whose business it is to remember the law.\*

How, then, in the absence of such a class, is the recollection of Punjab customary law preserved ? The answer is, that it is only necessary to remember the principle of the system ; and any given application of it follows, as a matter of course, so long as the facts on which the application depends are not forgotten. It has been pointed out that the history of institutions in a great measure consists in the re-combination of ideas now specialised, but, in early times, indistinguishable and intermixed. If progress implies differentiation, we must, reversing the process, continually resort to assimilation in order to trace its course. And in Punjab customary law this can easily be done if the theory stated is assumed to be true. Mr. Cliffe Leslie † says that the movement from common to separate property is closely connected with the movement from status to contract. Here, if I am correct, the movements are not merely closely connected : they are essentially a part of the same general change. If legal ideas originally blended are severed as society advances, and if the institutions corresponding with the components of the initial conceptions acquire, with progress, distinct forms and specialised uses, then we have an illustration of this growth in the circumstance that to Punjab law, in its primitive condition, the distinction between the law of persons and the law of things is unknown. Assuming that the communism of groups in their earliest state is based on kinship, then the mass of the civil rights and duties of any individual are determined by his personal relationship to those with whom he lives in common. Wherever ancestral shares practically regulate any sort of landed enjoyment, even if it be only that of the village waste, and even if the shares from the circumstances of first association or the course of events are unequal, there status and property are still intertwined. If the position of a man in the genealogical tree of his family, his clan, or his tribe, gives him a right to participate for life in the common possessions of his group, there the law of property and the law of persons have not yet been completely distinguished.

There is, indeed, much to suggest that in *primitive* Punjab custom,—I mean custom as it existed in connection with the earliest forms of property in the Punjab,—status formed

\* See "Maine's Village Communities," p. 56 ; "Early History of Institutions," pp. 27-44.

† Introduction to Primitive Property, p. xvi.

the whole, or nearly the whole, civil law. Even betrothal and marriage do not depend upon the will or intention of the parties immediately interested. Boys and girls find their lot already settled for them by the act of parents and relations; the choice is regulated by tribal considerations; and the bargain or contract operates outside the kindred group, not within it. Relationship to the rest of the family, the owners of the *taraf*, the community, determines the extent of a man's ownership in immoveable property; it supplies the rule of partition if partition be made; it fixes the conditions upon which land may be broken up, watered, cultivated and alienated. As are a man's rights, so are his duties. He pays the revenue, and contributes to village expenses or village or tribal fines, according to his ancestral share. On the occasion of a death the relationship of others to the deceased constitutes the principle of succession. In respect of property, the girl or married woman is wholly under the power of her father, or her husband, or her near male agnates. The limits to the proprietary rights of the widow are set by the expectations and authority of her husband's kin; or, in other words, are the consequence of the private conditions of the parties. Kinship, which is a department of status, is thus the paramount influence in regulating property and obligations. As Sir Henry Davies pointed out in his report on Gurdáspur, this system served in troubled times and for several centuries instead of title-deeds.

But it was always necessary that the facts of relationship should be accurately recollected, and for this purpose we find that a special class, the Mirásis or Bháts, does exist. In Ráwlpindi the Mirásis, whose business it is to remember pedigrees, "can tell in the most surprising manner the genealogical descent of the family without missing a name; if they miss one name, they are thrown out, and have to go back to pick the thread of the subject."\* Rána Hurra, believed to be the founder of a well-known family in the Umballa District, was descended, it is said, from a Chauhan Rájpút Rájá, who took Shambhal in the Morádabad District of the North-West Provinces. The Rána is supposed to have come into the Umballa or Thanesar District of the Punjab about 788 A.D. A full genealogical narrative of the family is given in the settlement report; and the account was collected from the *Pothis* or "Books of the Bháts of Sham-

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\* "Ráwlpindi Settlement Report," p. 121.

bhal, who came every year from the original residence of their Rájputás, and recorded the history of the family of Rána Hurra.” \* Granted that there is no distinction between the law of persons and the law of things, that the whole distribution and enjoyment of, and succession to, property is regulated by the order of relationship or descent from a real or supposed common ancestor, then it is easy to see that nothing more need be remembered except each person’s place in that order of descent.

Another matter that has excited some interest and curiosity is the assertion that customary law may be invented by the people by the means of the fiction that old rules to meet new cases have existed from immemorial times. I do not question the statement; on the contrary, I believe it to be true. But this fiction is often not far from the fact, if the theory I advance be allowed. When the villagers, mentioned by Sir Henry Maine, † regulated the distribution of water on customs supposed to have existed from all antiquity, although no artificial supply had been even so much as thought of, the probability is that they distributed it in accordance with their ancestral shares, by the principle of their mutual blood relationship, real or through adoption, accepted as such for all practical purposes. The shares may have existed from time out of mind, and so also may the habit of applying them to regulate the enjoyment of every description of property which was susceptible of common partition amongst the group. A similar assumption would explain the description of Irish gavelkind given by Sir John Davis which Sir Henry Maine ‡ tells us has occasioned some perplexity. “By the Irish custom of gavelkind the inferior tenancies were partible among all the males of the sept, both bastards and legitimate; and, after partition made, if any one of the sept had died, his portion was not divided amongst the sonnes; but the chief of the sept made a new partition of all the lands belonging to that sept, and gave every one his part according to his antiquity.” As we should say, the estate of the deceased was distributed amongst the brethren in accordance with their ancestral shares.

It is generally allowed, though often, I think, with too much reserve, that the mass of the agricultural population

\* “Wynyard’s Settlement Report,” p. 30.

† “Maine’s Village Communities,” p. 110.

‡ “Early History of Institutions,” p. 186.

in this province do not follow either the Hindú or the Muhammadan law in those questions which are usually included in the Tribal Codes. As regards both Hindú and Muhammadan law, I do not, of course, pretend to any such acquaintance with either subject as is possessed by a professional lawyer. I have only such a general knowledge of the outlines of these bodies of law as may be reasonably expected from an Indian officer of my service. But, with this explanation, I would say that the assumption made in the Punjab Civil Code and repeated in the fifth section of the Punjab Laws Act, that custom modifies either Hindú or Muhammadan law, appears to me to state the exact converse of the truth. It is not, I think, the custom which has modified the law ; it is the Bráhmanical law occasionally, and the Muhammadan law more often, which has modified the custom. If usage is as I conceive it, a fair popular description of it might be given by saying that it has a general resemblance to Hindú law stripped of refinements and ceremonials, and uncomplicated by any sacerdotal theories. It is a simplified and primitive version of the Hindu system, with the omission of the distinctions needed at a later phase of development, and with the additions required by vigorous village life.

Indeed, looking at the Hindú law from the point of view of a civilian engaged in administrative work, I may say that it seems to me to be much better suited to a country like Bengal, where the village system has been a good deal broken up, and where, at least in one place, there are distinct traces of the house community,\* than to this part of the empire. Punjab customary law differs from Hindú law ; but why does it differ, and in what directions may we expect the differences to appear ? If my theory is correct,—if in the Punjab the joint family, large or small, is historically later than the village community, the answer is, that the Hindú law is the product of a state of society that has passed beyond the stage of the communal village, or of the village held on ancestral shares. It seems to me to be designed throughout for families joint as amongst their members, but family with family in severalty. The bond of the village and the bond of the clan and tribe have disappeared. The ideas once

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\* " Instances occur in Calcutta, and possibly even in the Mofussil, of families, comprehending as many as 300 or 400 individuals, including servants, living in one house ; and it is probably usual for a family to amount to something between 50 and 100." — (RUSTIC BENGAL : "Calcutta Review," Vol. LIX, 1874, p. 207.)

associated with clanship have been transferred to the less primitive organisation of the caste.

Sir Henry Maine has shown how the phraseology proper consanguinity was extended to partnerships and guilds;\* and if guilds had a tribal origin, castes, when common occupation rather than common descent became the leading principle of social union, may have appropriated the distinctions and restrictions that in earlier times belonged to tribes. The priest, a mere astrologer or eccentric mendicant, when almost all the tribe were graziers, cattle-lifters and banditti, may, in more settled times, have gradually asserted at once the supremacy of reflection and the interests of his growing order. The Hindú law extravagantly exalts the Bráhman; it gives sacerdotal reasons for secular rules; it draws the prohibited degrees from kinship, it is true, but after that from caste, not from clanship; it is silent, so far as I am aware, about pre-emption, the rules preventing alienation by members of the undivided family taking the place of that; it is most careful to preserve the corporation of the family by minute rules and elaborate ceremonial in adoption; it has a mass of learning about acquired and ancestral property, about associated and disassociated brethren; its rules of partition refer to the family property, not to the village waste or the village arable lands. In the order of heirs, the village community is not enumerated. In the Púnjab, Hindús and Musalmans converted from Hindúism may fear or fee the Bráhman; but in civil affairs, Punjab customary law ranks him with other men. It is essentially unsacerdotal, unsacramental, secular. Clanship determines the choice of a bride. Pre-emption is universal. Adoption is a matter of convenience, not of ceremony; the unit to be preserved is rather the village corporation than the family; and the former seldom dies; it is only put to death by flood or famine, pestilence or war. Classifications of property, distinctions due to association or disassociation, are immaterial where, throughout a wide group, all enjoyment is in common. But partition of the village area, cultivated or uncultivated, acquires importance as severalty begins; whilst until that has begun, death simply makes one sharer the less in the produce of the common property. The principles of divergence lie in the elevation of a priestly class and the obsolescence of tribal and village organisation.

With Muhammadan law the case differs. Sir George Campbell, in the discussion on the Punjab Laws Bill in 1872,

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\* "Early History of Institutions," p 232.

said it had always seemed to him that the Muhammadan law was a law, not for a settled place, but for a wandering people, possessed of flocks of sheep and herds of cattle, which were divided among their descendants by rule of arithmetic. I would, in connection with this subject, invite attention to the remarks of Mr. H. St. G. Tucker, Settlement Officer, in his paper on the Customs of Dera Ismáil Khan. He observes that the Muhammadan law is most unsuitable for regulating the succession to land, and gives reasons for this opinion which appear to me to be singularly weighty. It is not only that joint lands are difficult to divide. Female succession and the wider liberty in the transfer of property by gift, which the Muhammadan law allows, are not consistent with village usage. A nomad tribe owning only flocks and herds, would, if sufficiently numerous, probably permit marriages within its limits; daughters and sisters would not by inheritance convey the property to strange hands. The moving tribe, as a whole, would carry about with them both the herds and their owners. When the tribe has settled on the land broken up into clans and sections holding villages, the character of property has changed; and with its character the rules should also change respecting its devolution and transfer. Mr. H. St. G. Tucker does not, however, regard the difficulty quite from this point of view. He dwells on the complications arising from the multiplication of heirs, and out of the need for ascertaining the order of deaths, which it is hard to do when women have for years married away in different families. Female succession is common in the Multán District, and there is in the same locality an unusually extensive power of gift. But the village system is in Multán weak or absent, save by the river banks; and the daughter, as I have already mentioned, is frequently excluded by the more distant collaterals when she has married into another tribe. If the view here given of the general unsuitability of the Muhammadan law to village communities is sound, the matter is important in the Punjab. By the Census Returns of 1868, Musalmáns were 53·02 per cent. of the total population; and of these, 57·40 per cent. were either agriculturists or engaged in occupations connected with agriculture.

That Muhammadan law has modified Punjab custom, rather than Punjab custom the Muhammadan law, does not appear to me to need much proof. Muhammadanism has necessarily been imported by conquering armies and immi-

grant tribes. It is not the indigenous religion, nor could its law, by any possibility, be the indigenous law. In the remarks just made, there is, no doubt, the suggestion that the Muhammadan law belongs to a phase of society which is earlier in point of development than that generally attained in the Punjab; in fact, that it meets the needs of a pastoral, not of an agricultural people. But this suggestion is quite in harmony with the religious origin of the whole Muhammadan system amid the Bedouin population of Arabia; and it is not inconsistent with the belief that in this part of India, before the early irruptions of Muhammadan conquest, society had reached a stage not far off that in which it now stands.

But—putting aside the question of the relative juridical antiquity of Muhammadan law and Punjab custom—if it be accepted that the latter is historically earlier than Hindú law, and a growth, strictly and properly speaking, natural to agricultural tribes settled in village communities, then it is not difficult to explain the existence alike of its most conspicuous omissions and of its principal contents. There is, as I have said, no separation of the law of persons and things. There is no law of wrongs. It is the group that is injured rather than the individual; and vengeance and redress in old days were achieved by private war. There is no law of easements. Property is held by bodies of men and enjoyed in common. No man can have an easement in that which is partially his own. The enjoyment within the group is regulated by ancestral shares. No outsider can intervene to acquire any right over the joint holding; he cannot establish any easement, and there can be none within the group itself. There is no law of trust. The tribe or village holds the land; members of the community have a share. There is no need either to make specific arrangements for succession or to provide for the interests of specific individuals, or to secure the maintenance of particular families; the corporation is lasting, and the whole plan of succession is completely defined in its genealogical tree. On the other hand, succession itself, on which the entire system hinges, is abundantly dealt with; and rules as to betrothal, marriage, adoption, gifts, and transfers of property, are plentiful, because they affect the structure and continuance of the organic group, and the retention of its land in its possession.

## SECTION IV.

### SOME PUNJAB SURVIVALS.

ON particular matters of interest in the several papers, I have usually remarked at sufficient length in the text. But I will here refer to a few instances in which the evidence adduced bears directly upon one or two modern sociological enquiries; for I shall thus indicate some of the points of contact between the present comparatively narrow field of study and the far more comprehensive subject of the early history of human institutions at large. If any officers of the Punjab Commission, and especially the Settlement Officers, who have the best opportunities, can find leisure to pursue the lines of investigation which are here imperfectly sketched, they will certainly do some service to science; and, through the influence, on political philosophy and applied politics, of accepted scientific conclusions, they will less directly, but quite as really, contribute to better the practical government of the empire.

Every one interested in the study of primitive societies is already familiar both with the general doctrine of survivals and with the best known application of it in the history of social evolution—the form, I mean, of capture in marriage. Whenever an institution or practice outlasts the intention or purpose it originally served, and is maintained either for some fresh reason or as a mere symbol, whether or no the significance of the symbolism be remembered, such an institution or practice is, juridically, a survival.\* Legal ceremonial, and especially the legal ceremonial of primitive communities, who have not learnt to rid themselves quickly of no longer useful forms, is charged with survivals of past practices; and the form of capture in marriage ceremonies is a survival of this kind. “The symbol of capture,” says Mr. McLennan, “occurs whenever, after a contract of mar-

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\* This definition is framed to suit investigations into the history of law. If we were to include other branches of research in physical and social science, much wider terms would be necessary. As Mr. Tylor introduced the word, I quote his description of its meaning. “Survivals,” he says, “are processes, customs, opinions, and so forth, which have been carried on by force of habit into a new state of society different from that in which they had their original home, and they thus remain as proofs and examples of an older condition of culture out of which a never has been evolved.”—(“Primitive Culture” 1871, Vol. I, p. 15.)

riage, it is necessary for the constitution of the relation of husband and wife that the bridegroom or his friends should go through the form of feigning to steal the bride, or carry her off from her relations by superior force. The marriage is agreed upon by bargain, and the theft or abduction follows as a concerted matter of form to make valid the marriage. The test, then, of the symbol in any case is, that the capture is concerted, and is preceded by a contract of marriage. If there is no preceding contract, the case is one of actual abduction."\* I should add that it seems to me a legitimate use of the expression 'form of capture,' to make it include cases where some pretence of capture, or the use of violence, is an accompaniment of the marriage ceremony, though not necessarily essential to the validity of the tie. Further on Mr. McLennan concludes that, wherever capture, or the form of capture, prevails, or has prevailed, there prevails, or has prevailed, exogamy ; and, conversely, that where exogamy can be found, we may confidently expect to find, after due investigation, at least traces of a system of capture. Exogamy is the antithesis of endogamy ; the latter occurs where the members of a family, section, clan or tribe are forbidden to intermarry with members of other such groups, but are free to marry amongst themselves. On the other hand, a family, section, clan or tribe which forbids the union of its own members amongst themselves is exogamous ; but the principle of exogamy implies something more than this —it prohibits the union of persons of the same blood, so that it may be preserved even within the circle of the tribe. A tribe that permits marriage with any class indifferently is not strictly either endogamous or exogamous.

I do not here propose to attempt any full answer to the question, what light is thrown by the facts of marriage customs in the Punjab on the conclusions at which Mr. McLennan has arrived ; it will be possible only to suggest some directions in which more extensive inquiry will be profitable. For example, it would be interesting to collect undoubted instances of the form of capture itself. With the *janj* or *barát*, the marriage procession of the bridegroom to the house of the bride, every one who has served in the Punjab is familiar. To me, at least, this has always seemed the mimicry of a foray in quest of a bride ; and the account of the *janj* in Peshawar by Major Hastings gives

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\* "Studies in Ancient History," p. 17.

some colour to the supposition. "The journey of the procession," he says, "is varied by discharging guns and blunderbusses, and music on the pipes and drums." The occasion, in fact, is honoured by some of the rude, 'pomp and circumstance' of primitive warfare. One form of marriage in Kúlu is where four or five men go from the bridegroom to the bride's house, dress her up, put a cap on her head, and then bring her home to the bridegroom; and this recalls the romantic symbol in the Roman plebeian form when, by pre-arrangement, the bridegroom's friends, armed like gladiators but unopposed, carried off the bride from her mother's bosom.\* Significantly, the Suniyárs in the same part of the country, when marrying a Kanet or hill girl, send to the bride's house a *knife* to represent them. At Rome, the bride's hair was divided with the point of a spear. Mr. J. B. Lyall heard in Spiti that "when the bridegroom's party goes to bring the bride from her father's house, they are met by a party of the bride's friends and relations, who stop the path; hereupon a sham fight of a very rough description ensues, in which the bridegroom and his friends, before they are allowed to pass, are well drubbed with good thick switches." In Hazára, however, such hard usage has atrophied into mere harsh words. "There is a feature," says Major Wace,† "in these ceremonies even more lamentable than the money which fathers take for their daughters. The women who are the guests and bystanders" (the ceremony, I shall note, takes place at the bride's house, and these women may therefore be held to represent the party of the bride) "find an immoral delight in pelting the bridegroom's procession with such abuse as gives us an appalling view of the standard of social morality common among the generality of the population." It would have been unjust to gauge the standard of Roman poetical composition by the fescennine verses sung or said at rustic marriages; and let us charitably hope that we have here a double survival, and that, at the present date, the conduct of the Hazára women is rather better than their freedom of speech at weddings might lead an observer to suppose.

A paper has recently appeared in the "Roman Urdu Journal,"‡ written by an officer of long judicial experience in the Ráwalpindi District, in which the marriage ceremonies there in use are stated in considerable detail. The writer believes

\* "Studies in Ancient History," 1876, p. 19.

† "Hazára Settlement Report," p. 300.

‡ Volume II, No. 16, p. 17.

that the marriage customs he describes will be found to be generally identical with those prevailing in the Upper Punjab, and certainly in all districts trans-Rávi. The procedure of Hindús and Muhammadans is separately narrated. In all cases of the marriage of a virgin, the bride is secluded for some days before the wedding, and this seclusion is known as *maiyan*. So, too, the *janj* or *barát*, the wedding procession, starts from the house of the bridegroom and fetches thither the bride. The seclusion is not essential to the validity of a Muhammadan marriage, in which the prominent ceremony is reading the *nikáh*, or Muhammadan marriage service. In Hindú marriages it is the *láwán-phere*, the seven-fold circumambulation of the water-vessel and lamp, that binds the parties; all other ceremonies may, on rare occasions, be dispensed with. A marriage by *láwán-phere* only is called *chori-ka-byáh*, or stolen marriage. Amongst Hindús, during the ceremony, but before the *láwán-phere*, "some practical jokes, such as thumping and pinching by the younger female members of the bride's family, are usually carried on, and good naturedly submitted to by the bridegroom and his younger relatives up to" a stage of the proceedings when the father of the bride formally gives her away. The mock hostility of the bride's friends towards the bridegroom and his companions finds, therefore, a less boisterous, and perhaps more decent, expression here than in Spiti or Hazára. But the form of capture is in the last stage of decadence; it is not even an essential ceremony; the unconscious but living record of a forgotten past, it lingers on as a mere occasion for social display.

It is expressly said that, on the marriage of widows, among such Hindús as Aroras, Sonars, Chhimbas and Játs, and among Sikh Játs, there is no particular ceremony, except that a white sheet, coloured at the corners, is thrown by the man over the woman's head. In Gurgaon, Rohtak, and in several other districts, the absence of ceremonial in widow marriages will be observed. Now, apart from the desirability of avoiding expense, why should there be no procession when a man marries his deceased brother's wife? I take it that, as the widow already belongs to the clan, the pretence of an expedition to capture her would never have had any significance. *Karewa* or *karáo* marriages could never have been, in point of fact, marriages by capture; there was no opportunity, therefore, for the survival of the form.

So far, we have numerous instances of the occurrence of the form of capture; and a good reason for its absence in one

set of cases where it does not occur. On the universal coincidence of the form of capture with exogamy, either present or past, it is difficult to express any opinion. By finding endogamous clans, who employ the *janj* or *barát* at marriages, we should not much advance the argument. Such clans might have been exogamous at an earlier stage in their history ; and, indeed, the *barát* itself would raise a presumption to this effect. The form, however, might be the result of simple imitation—a prolific source of social observances. I think it probable that conversion to Muhammadanism will be found to have relaxed the objection to marriage within the clan, as in the case of the Rāngars in the Rohtak District ; but that, in such instances, the *janj* or *barát* would not be disused. It would be well, whenever the marriage ceremonies of any tribe or clan are described, to note whether the group is exogamous or endogamous, or, if I may coin a word, *cænogamous*—permitting marriages with women within or without the group indifferently. In the socially higher tribes there would, no doubt, be always some inferior classes with whom marriage would under no circumstances be permitted.

Mr. McLennan, in considering the question whether of the two, exogamy or endogamy, is the more archaic, is led to state his original and striking theory, that the most ancient system in which the idea of blood relationship was embodied was the system of kinship through females only. His answer to the question he propounds is too complicated to admit of abridgment ; but it is essential to his argument that polyandry should be accepted as a stage in the progress from kinship through females only towards marriage proper and the patriarchal system ; and he takes the obligation on the younger brother to marry the widow of the deceased elder brother as evidence of the former practice of polyandry in communities where this rule obtains. One main ground of this view is, that such marriages were originally a right of succession or the counterpart of such a right, "the next younger brother succeeding to the universitas of the elder—taking up all his rights and obligations—*inter alia* his widow." The brother, as regards the whole inheritance, would thus be preferred to the sons ; and, if so, no doubt it would be a legitimate inference that the preference of the brother to the sons could only be due to polyandry either in the present or the past. But in the *karewa* or *karáo* marriages, say of the Rohtak and Gurgaon Districts, the brother who may be, I think properly, said to inherit the wife does not exclude the sons : and, so far

as this argument goes, there would be no reason to consider *karáo* in that part of the country a trace of polyandrous marriage. Again, it is urged, the obligation is in all cases "to raise up seed" to the elder brother; and, writes Mr. McLennan, "it is obvious that it could more easily be feigned that the children belonged to the brother deceased if already at a prior stage the children of the brotherhood had been accounted the children of the eldest brother, *i.e.*, if we suppose the obligation to be a relic of polyandry."\* In Pesháwar it does not appear that there is any obligation; the succession to the deceased brother's wife is regarded as a right. Moreover, several allusions to the practice will be found without any distinction being made as to the relative age of the deceased and surviving brethren.

But there are two circumstances—one connected with the Gurgaon District only, and the other with the districts of Gurgaon and Rohtak—that would go to confirm the opinion of Mr. McLennan. First, I have heard that amongst the Játs of Gurgaon many, indeed a very unusual proportion, remain bachelors; and that if one married brother is away, it would not give rise either to scandal or ill-feeling if his wife, during his absence, extended her favours to the rest of the fraternity.† I doubt if such practices would be openly admitted, but this assertion was made to me by good authority. Whether a like statement would apply in any other district or tribe of the plains, I cannot say. The Gurgaon Játs, of course, practise *karáo*; and assuming the facts to be as stated, there is at least the sentiment that would not reject polyandry. Secondly, in Rohtak and Gurgaon, amongst the Ahírs, the widow may not marry her late husband's elder brother, but she may marry his younger brother; and the Ganrwas of Gurgaon follow the same rule. Among the Játs and Gújars and Mallahs of Gurgaon a widow may marry her husband's elder brother, but it is considered more proper for her to marry the younger brother. With the exception of the Ahírs the *karáo* in Rohtak takes place between the widow and her deceased husband's elder or younger brother or cousin. Now, here, we have in the same part of the country, and amongst tribes not widely unlike, the rule against the marriage of the widow to the elder brother of the deceased in

\* "Studies in Ancient History," p. 164.

† In the article on the "Játs" in Sir Henry Elliot's "Races of the North-Western Provinces," page 135, I find the statement—"Second marriages are common, and they" (the Játs) "are still accused by their neighbours of having a community of wives." Mr. Beames, the editor, adds in a note—"But the accusation is quite unfounded."

various stages of validity or invalidity—first in full force, then as a mere optional rule of propriety, and lastly, altogether absent. It thus wears much of the appearance of a survival; and if it is so, how can it be explained? I observe that in Tibetan polyandry, where all the brothers have one wife between them, the eldest brother selects the wife. The case, therefore, of the wife passing to the eldest brother by a sort of succession could never occur. The eldest brother by the rule of the country would be in the enjoyment of the wife if there were one in the family. The younger brother or brethren, however, might not, up to the time of the eldest brother's death, have been old enough for a wife; or for other reasons they might not have exercised the right of which the eldest brother, who actually took the wife, necessarily availed himself. It is not difficult to suppose that, under the old polyandrous system, no case having been known at least of an *eldest* brother coming for the first time into the possession of the wife on the death of one of the brethren, afterwards, on the disuse of polyandry, a prejudice might have survived refusing the widow of a younger to an *elder* brother.

The very general rule in Gurgaon and Rohtak, and probably elsewhere, that a man may not marry a woman of his mother's *got*, or of his paternal or maternal grandmother's *got*, shows the persistence of the ideas of kinship through females amongst an agnatic community, the more interesting because it is connected with the most conservative of all institutions, that of marriage. But a question in the Punjab which seems to me to specially deserve attention in this connection is the rule of *chúndavand*, by which the sons, however few, of one wife take a share equal to that of the sons, however many, of another. This rule is, I think, characteristically a survival. It is plainly unjust now, and seems to serve no useful purpose whatever. It does not prevail, so far as I can judge, on any fixed principle or amongst any definitely ascertainable set of clans. This, at least, is the inference from the facts in the Siálkot District, where the same tribes sometimes adopt this rule, and sometimes that of equal succession. It is a temptingly suggestive circumstance that uterine apportionment is the general rule in Kángra proper, a part of the country so near the region where polyandry still exists. One might easily leap to the conclusion that *chúndavand* is directly descended from the ruder form of polyandry by which, the husbands being of different stocks, the only rule of kinship and succession was

through the mother. Each woman having a separate family, each family should have a separate share. But, in the first place, Kúlú intervenes, where, it is said, the inheritance is now *pagvand*, or *per capita*; and in the second place the polyandry of the Kángra hills is the Tibetan form of a joint marriage of brothers; and this may be consistent with equality amongst the sons who may be presumed to be the sons of the eldest brother. Is it possible that an allegation made in Seoráj supplies the clue? In that part of the country a combination is found of polygamy and polyandry, that is to say, several brothers may have between them several wives in common. In a dispute about an inheritance in a case of this sort, where the fathers had several wives in common, some there said that the sons of each mother should get an equal share. This is precisely *chúndavand*; and the suggestion stands midway between the ruder polyandry, where the mother alone was the bond between the offspring, and polygamy, when uncomplicated, as in Seoráj, by simultaneous polyandry, but existing in the usual form of the appropriation of several wives to one man. It thus seems to me possible that *chúndavand* may be a relic of a state of society, which had begun to be polygamous without having entirely disused polyandry. And I think the rule, whereby the brother of the whole blood excludes his brother of the half blood by the same father but by a different mother, is a mere application of the principle of *chúndavand*, and should be in time abrogated with it. I cannot at present offer any better explanation of a custom with which all the officers in the Punjab Commission are very familiar. Let me express the hope that the subject may be further investigated.

The time of the officers of the Punjab Commission, however, is fully occupied; and it may be asked, what is the connection of inquiries into the origin and history of kinship and society, with the practical business of Indian administration? I have already indicated the answer I should give to that question; and I will conclude this Introduction by stating it more fully. The connection, I think, is important and intimate. The researches now in progress in Europe have brought us to the threshold of a new philosophy of social development; and this result has been achieved by methods of a strictly scientific character. In a few years more it may be possible for those who study in the West the history of society to formulate a much more complete and credible theory of human advance from naked

savagery to national civilisation than has yet been offered to the world. If this can be done, if a scientific account of social evolution can be framed for the acceptance of the public, and, more particularly, of statesmen and administrators, the practical business of Indian government will be immensely facilitated. This most heterogeneous empire consists of a vast variety of races, some quite barbarous, and others approximating, in highly different degrees, to the civilised state. But all are alike in this, that they are many centuries in arrear of the governing body. It is difficult for a civilised foreign Government always to keep vividly present before it the breadth and depth of the gulf by which it may be severed from its subjects, if the latter stand at a primitive phase of development; and this is a difficulty which an improved theory of social history will obviously go far to remove. Besides, the better the people are understood the better will they be governed; and they will be the happier, not only as the direct consequence of easier discrimination and less frequent failure of justice, but also because they will not suspect that they are despised. Fully to understand a people you must be able to explain its institutions as well as to recount them; and this is precisely what it is the object of the new social philosophy to do. If you can assign a race or tribe its place in social evolution you know very much what to expect of it; and if you are acquainted with the principle of its growth you are at no loss to perceive in what direction advance will be fruitful, for you can see the course it would take, had it been left to occur as a natural process. A sound theory, therefore, would not merely inculcate moderation in the present; it would be a standing guide to continuous progress.

It is not to be expected that the first attempt to construct a theory of Punjab customary law will wholly succeed; but co-operation may yield, before very long, a successful account of the subject. If so, this will be in the main due to the application to the facts of the case of the wider generalisations arrived at by eminent men in Europe after the survey of a more extensive field of observation. Their conclusions should be tested by our experiences. Much that is, at first sight, not readily comprehensible to us will become clear; and it may, perhaps, not be arrogant to hope that the future labours of some amongst ourselves may contribute to hasten the consummation towards which the more comprehensive efforts of men of wider learning and greater leisure are already quickly advancing.

## SECTION I.

### THE GURGAON DISTRICT.

THE following "Code of Tribal Custom" was compiled by Mr. J. Wilson, Assistant Settlement Officer, employed in the recently completed settlement of Gurgaon. The "Code" has not hitherto been printed, nor has it been submitted to Government. I have to thank Mr. F. C. Channing, Settlement Secretary to the Financial Commissioner, for permission to insert it here. The whole paper, as it stands, will be hereafter circulated as an Appendix to the Gurgaon Settlement Report.

Such other remarks as seemed needed have been made in the Introduction.

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#### GENERAL CODE OF TRIBAL CUSTOM.\*

##### PREFACE.

The General Code of Tribal Custom for the Gurgaon District has been prepared in the following manner. The village headmen of each of the principal land-owning tribes in the district were called together by tribes; and a series of questions drawn up by Mr. C. L. Tupper, C.S., and approved by the Punjab Government, were put to them as plainly as possible, and their answers carefully recorded, with instances and exceptions attested by them. I myself superintended the attestation of the customs of all but a few of the less important tribes; and afterwards, from the record made by the Extra Assistant Settlement Officer and myself, drew up a Code for each tribe separately (except that the Codes for some of the less important tribes were combined from the first). These separate Codes with some hundreds of instances will be found in another Volume.† I have now in this General Code combined all these Tribal Codes into one,

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\* For Table of Contents, see Appendix A.

† Not printed.

noting, under the answer to each question, in what respects the customs of the different tribes are the same and in what they differ, and adding remarks, suggested during the course of attestation, explanatory of the custom referred to.

As the village headmen, who represented their respective tribes, are the men who represent their villages in all important transactions, and are, as members of the most influential families in their respective villages, likely to be the most intelligent men of their tribe ; as, of the 3,568 headmen of the 21 tribes in the district which own more than one or two villages, 2,754 were present at the attestation of their Tribal Code ; as a European officer, assisted by an experienced Native, superintended the attestation of the more important Codes, and afterwards drew them up carefully, with his own hand after much deliberation ; and as the following General Code of Tribal Custom has been drawn up by a careful comparison of the different Tribal Codes, it may be accepted as of some authority on the customs of the district.

The extraordinary similarity of the customs of the different tribes is worthy of note, extending, as it does, not only to all Hindú tribes, from the Bráhman and Rájpút to the Gújar and Malláh, and not only to tribes formerly Hindú and now Musalmán, such as the Meo and the Khánzáda, but to the tribes which claim a foreign Musalmán origin, as the Sayad and the Mughal. Indeed, there are hardly any traces of the Muhammadan law in any tribe, except in the customs regarding marriage among Musalmáns, with whom the only valid form of marriage is the Muhammadan *nikáh*, nor, on the other hand, are the nice distinctions of the so-called Hindú law to be found in the customs of the Hindú tribes : for instance, there is little trace of the importance attached by Hindú law, in questions of inheritance and adoption, to the duty of presenting oblations to deceased ancestors, and the degrees of relationship thereby defined.

The Hindú tribes are, in order of importance as regards numbers, the Ját, Ahír, Rájpút, Bráhman, Gújar, Gaurwa, Banya, Taga, Dhúsar, Malláh, Agrí, and Kayath. The tribes formerly Hindú, but converted to Islám, are the Meo, Khánzáda, some Rájpúts, some Gaurwas, and some Játs. The tribes which claim a purely Musalmán origin are the Shekh, Beloch, Sayad, Pathán, Fakír, and Mughal.

The prevalent customs are very simple. The usual subdivision of the tribe is into *gôts*, the *gôt* being founded on the tradition of common descent, and embracing all descendants

through males of the common male ancestor—in a word, all agnates. According to strict old custom, no one save an agnate could be adopted, so that no stranger could be admitted into the *göt*; but now, with the consent of the agnates, a person related through a female, and therefore belonging naturally to another *göt*, may be adopted into the family and *göt* of his adoptive father. Betrothal is a contract generally entered into between the parents of the boy and girl to transfer the ownership of the girl to the boy's family on her reaching puberty; and even the death of the boy does not make the contract void. By the ceremony of marriage, in which among Hindús an old form of sale is gone through, the ownership of the girl is actually transferred to the boy's family, who have thereafter full power over the girl, while her rights and duties towards her own family are thereby cancelled. On the death of the husband, the widow must either remain a widow or marry her husband's brother, unless the agnates sell her to a stranger of the same tribe. A woman is always, to some extent, under the control of her own agnates until marriage, and then of her husband's agnates. A boy is, until puberty, under the guardianship of his father, or, failing him, of the near male agnates. According to strict old custom, none but the male agnates can inherit—the property cannot leave the *göt*; but most noteworthy is the universal custom that, in default of male agnatic descendants, the widow, in all cases, takes a life-interest in her husband's share, and can, even if the family be living jointly, claim partition; but she cannot alienate the property, which on her death reverts to the husband's agnates.

The right of representation is of universal application. Where an agnate would have taken a share if alive, his male agnatic descendants, or, failing them, his widow, invariably take his share if he is dead. Brothers take equal shares, except in the few cases in which the peculiar custom of taking the inheritance by mothers prevails. The order of inheritance is simple and consistent. First, all the male agnatic descendants of the deceased inherit. Failing them, his widow takes a life-interest in the whole property of the deceased. Then his father, then the male agnatic descendants of the father, then the mother, then the paternal grandfather, then the male agnatic descendants of the paternal grandfather, and so on in the same way, never going through a female—that is, never leaving the *göt*. A man having no

male agnatic descendant may adopt a son from among his male agnates of a lower generation. The adopted loses all claim to his natural father's property, and inherits as a son of the person adopting him. The form of adoption consists merely in handing the son over ; and there is no restriction as to age. Women have no property at their own disposal. Illegitimate children are not recognized. Wills are unknown.

Gifts of immoveable property cannot be made without consent of the male agnates. The father has full power over the moveable property, and can do with it as he likes. He may also, during his lifetime, do as he likes with the immoveable property, provided he does not alienate it, except in case of absolute necessity ; but on his death the male agnates are entitled to their shares by inheritance, and he cannot defeat their rights. With the consent of the male agnates, however, he can give immoveable property to a relation through a female, such as a daughter's son or husband ; or can adopt a daughter's son. Without the consent of the male agnates the immoveable property cannot leave the *göt*, *i.e.*, the agnates. The widow of a man who has died without male agnatic descendants can adopt for him one of his male agnates, who succeeds as his son : she cannot without the consent of the male agnates alienate the property from them.

It is remarkable how few modifications of these simple and consistent old customs are found. The refinements and subtleties of the Muhammadan and so-called Hindú law should be introduced as little as possible.

J. WILSON,

*Assistant Settlement Officer.*

## PART I.—SECTION I.

## FAMILY RELATIONS.

*Question 1.*—Are any persons considered to be relations besides those who are descended from a common ancestor ? Nature of relationship.

Are all or any of the kindred of the wife considered to be the relations of—

- (1) the husband;
- (2) the husband's relatives or children ?

If so, state the persons who are relatives, with the names of the relationships.

*Answer 1.*—Besides persons descended from a common ancestor, the following persons are considered to be relations (*rishtadár*) ; but, except those descended from a common ancestor, none of them can be called heirs (*wáris*) :—

(a) Kindred of the wife considered to be relations of the husband are wife's father=*susrá*, wife's mother=*sás* or *sású*, wife's brother =*sálá* or *sáro*, wife's brother's wife =*salaij* or *salahj* or *sáriyá* or *sálhá* or *sáliyá* or *sálhe*, wife's sister =*sálí* or *sári*, wife's sister's husband =*sádhú* or *sádú*.

All these relations taken together, that is, the wife's father's family, are called *susrál* or *susrár* or *sásrá*—a word which denotes rather the house or village where they live than the persons themselves.

(b) Kindred of the wife considered to be the relations of the husband's relatives are the father and mother of the wife called *samdhí* and *samdhán* respectively of the father and mother of the husband, and *vice versá*. The collective relationship, or rather the house or village, is called *samdhíyáná* or *samdháná*.

(c) Kindred of the wife considered to be relations of the husband's children, that is, relations through the mother, are mother's father =*náná*, mother's mother =*nání*, mother's brother =*mámín* or *mámá*, mother's brother's wife =*mámí* or *máiñ*, mother's brother's son =*mámún ká bétá bhái*, mother's sister =*mausí* or *máusí*, mother's sister's husband =*mausá*. All these relations taken together (or rather their house or village) are called *nansál* or *nanihál* or *nansár* = wife's father's family.

(All tribes without exception.)

*Notes.*—The word *rishtadár* is used in this district for “relation” in the fullest sense, and would include any relation by blood or marriage, however remote. When the word *wáris* is used for “relation,” the people think of the rules of inheritance; but sometimes *wáris* = owner (*málik*) or master or guardian. The word *ekjaddí* = person descended from a common ancestor, rarely includes any but males descended through males, who alone are in most tribes entitled to inherit. Thus *ekjaddí* is equivalent to “agnate,” except that it does not include females. Sometimes *asnáo* is used as equivalent to *rishtadár*, “relation,” and sometimes *áshnáo* is applied particularly to a son-in-law (*janwái*). It is evidently a corruption of *áshná*.

*Dadsál* = the house or family or village into which one’s grandfather (*dádá*) married; *nansál* = the house or family or village into which one’s father married; *susrál* = the house or family or village into which oneself married; *sam-dhyáná* = the house or family or village into which one’s son married.

A woman calls her own father’s house *píhar*.

Other relationships are—Father’s father = *dádá* or *bábá*; father’s elder brother = *táyá* or *táo*, and his wife *tái*; father’s younger brother = *chachá* or *cháchá* or *káká*, and his wife *cháchí* or *chachí* or *kákí*; father’s sister = *búá* or *phúphí*, and her husband *phúphá*; step-mother = *dúsri má* or *mausí* or *maindar má*: this word *mausí* is used for (1) mother’s sister, (2), stepmother, and (3) brother’s or sister’s mother-in-law; brother = *bhái* or *bhaiyá*, sister = *bahin* or *báhin*; elder brother’s wife = *bhábhí* or *bháwij*, younger brother’s wife = *bahoriyá*: this word *bahoriyá* is also used for a son’s wife, who is generally called *bahú*, a word also applied to one’s wife.

The word *bahú* is used generally for the wife of a relation younger than oneself or of a younger generation.

*Notes.*—Wife’s brother’s son = *sárút* (son of *sárá*), but generally called simply *bhatijá* = brother’s son; husband’s other wife = *sauk* or *saut*; husband’s sister = *nand* or *nanad*, and her husband *nandoí* or *nandeú*, and her son *nandút*; daughter = *dhí* or *béti*, and her son *dheotá* or *dohtá* or *nauásá*, and her husband *janwái* or *jammái* or *dámád* or *khwesh*.

The Musalmáns, of course, know the Persian terms of relationship, but they are seldom used, the Hindú terms being more common even among the Sayads.

In the course of attestation the comparative difficulty

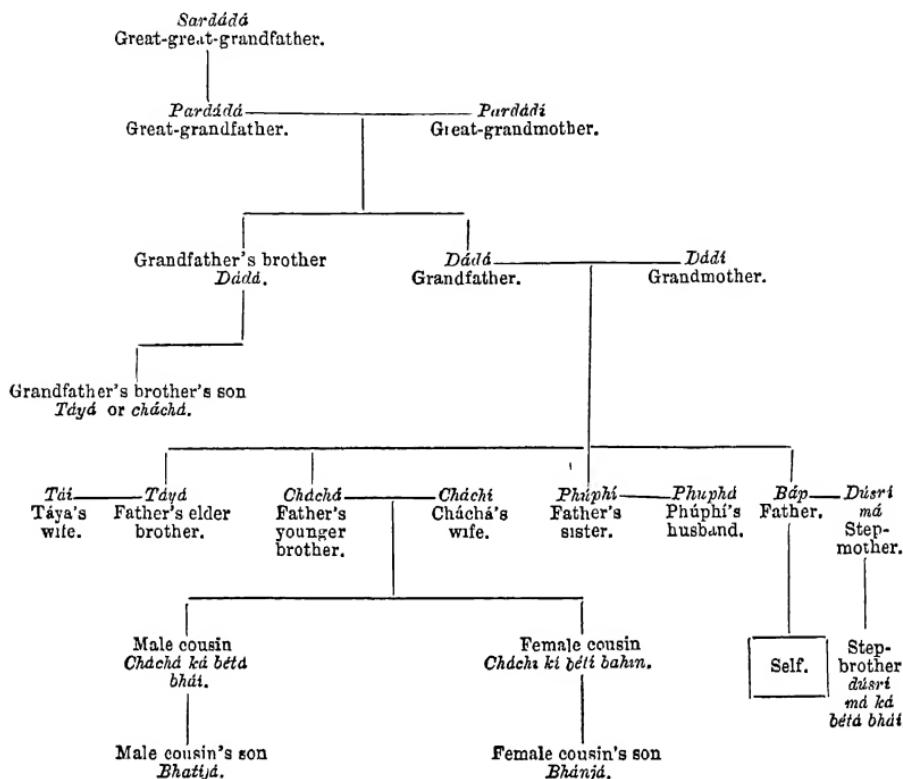
which the people evidently had in following out relationships through the mother, wife, and daughter showed how much more importance is attached to relationship through males than to that through females.

In describing a relationship beyond those for which there are special names, the special name of a similar nearer relationship is used, but always a name which shows that neither the generation, nor the fact that the relationship is through a female (if it be through any female except the wife), is lost sight of. Thus a grandfather's brother is *dádá* or *náná* as the case may be; a father's cousin *cháchá* or *mámún*.

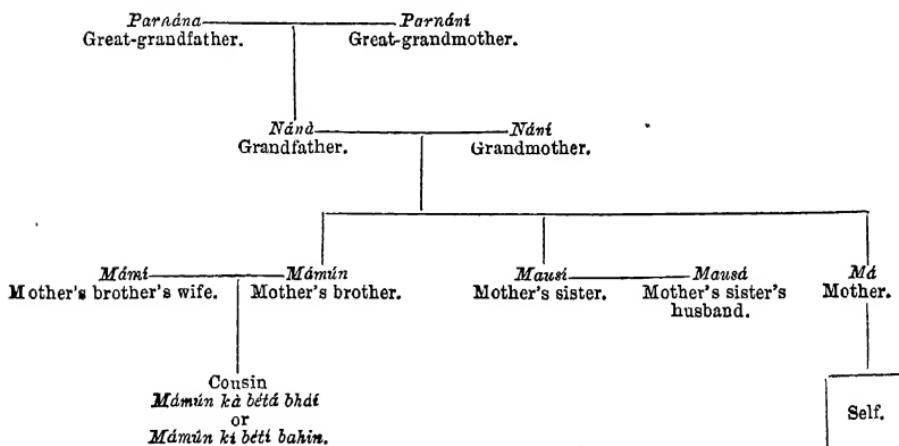
It is worthy of note that there is no word meaning "cousin." It has to be expressed by a periphrasis, such as *cháchá ká bétá bhái*.

A father is addressed as *lálájí*. A man addresses all women, except his wife, with *ari*, the feminine form of the interjection; his wife he addresses with *are*, the masculine form. It is very improper for a man to address any other woman with *are*, as signifying improper relations.

A woman addresses her husband and all male relatives equal to, or older than he, with *jí* or *ají*; she need not be so polite to her husband's younger brother or nephew. A man must never mention his wife's name, nor she his. This is strictly adhered to even by the Musálmán Sayads. No reason can be given for this superstition, save immemorial custom. A man speaks of his wife as the dame (*bírbání*), the housewife (*gharwáli*), the lass (*lugát*), the wife (*bahú*, often pronounced bow = bend), or describes her as "*Rámdáski*" from her father, or "*Dhansingh kí má*" from her son, or "*Bádshápür wáli*" from the place of her birth. The word *bíbí* is used rather in speaking of a sister than of a wife. *Aurat báni* is applied to women in general. A man speaking of another man's wife talks of her as so-and-so's *bír báni*. A wife talks of her husband as *gharwálá* or *kháwind*, or so-and-so's father or so-and-so's uncle. An elder brother looks on his younger brother's wife as something like a son's wife: thus the word *bahoriyá* is applied to both, and in some tribes which allow the younger brother to marry his elder brother's widow, an elder brother cannot marry his younger brother's widow.

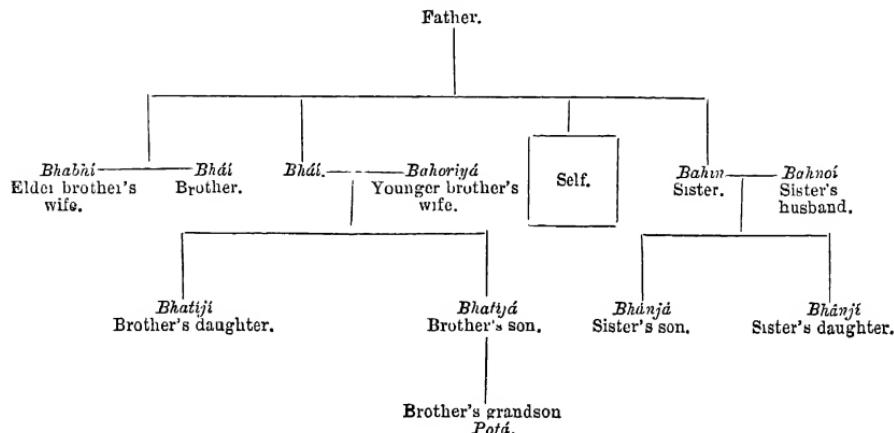
*A.—Relations through the Father, whether of man or woman.*

A woman calls this her *pīhar*.

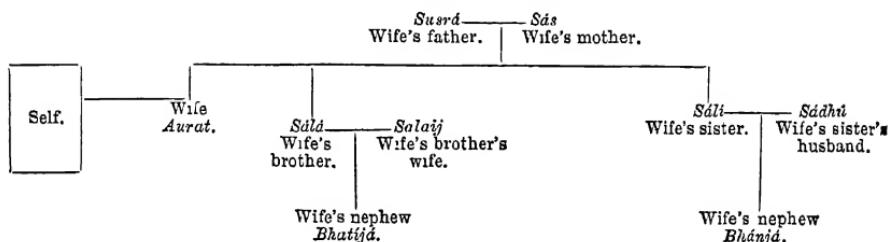
*B.—Relations through the Mother, whether of man or woman.*

These relations form the *nānsāl* = mother's father's house.

## C.—Relations through the Brother and Sister, whether of man or woman.

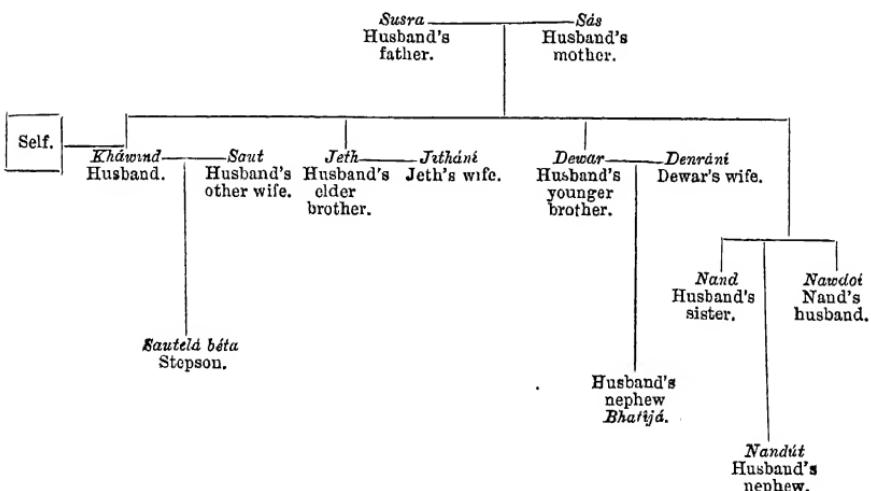


## D.—(1) Relations through the Wife, of a man.



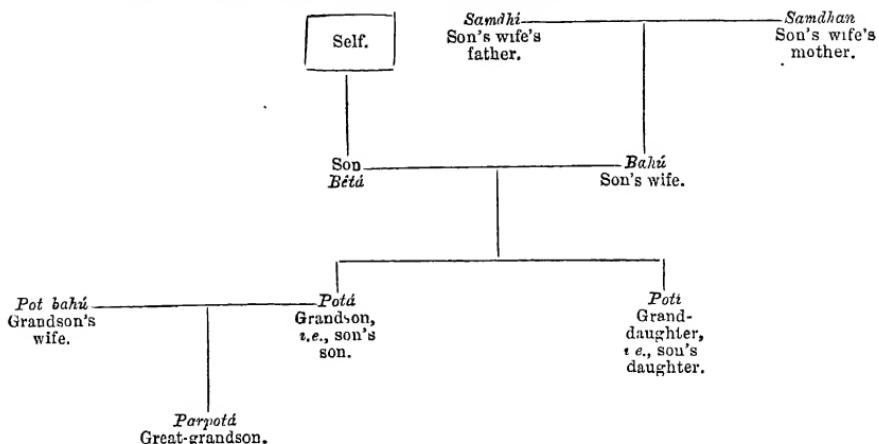
This is a man's *susrāl* = wife's father's house.

## D.—(2) Relations through the Husband, of a woman.



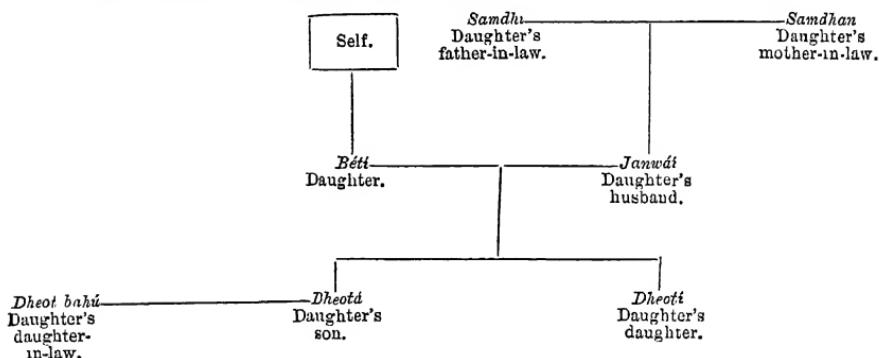
This is a woman's *susrāl* = husband's house or family.

## E.—(1) Relations through the Son, whether of man or woman.



A man calls his child's father-in-law's house his *samdhīyāna*.

## E.—(2) Relations through the Daughter, whether of man or woman.



**Question 2.**—Explain your system of reckoning generations; and give a table of kindred with the local names of the relations up to the third degree in both the ascending and descending line.  
 Mode of reckoning  
 generation.

By how many generations are the following persons said to be related to the person whose relatives are to be reckoned?—

- (1) Brother;
- (2) Father;
- (3) Uncle;
- (4) Cousin-german, i.e., uncle's son;
- (5) Brother's grandson;
- (6) Great-grandson;
- (7) Great-grandfather.

**Answer 2.**—All persons of the same generation are reckoned as equally distant with regard to generation. There is no custom of reckoning by degrees.

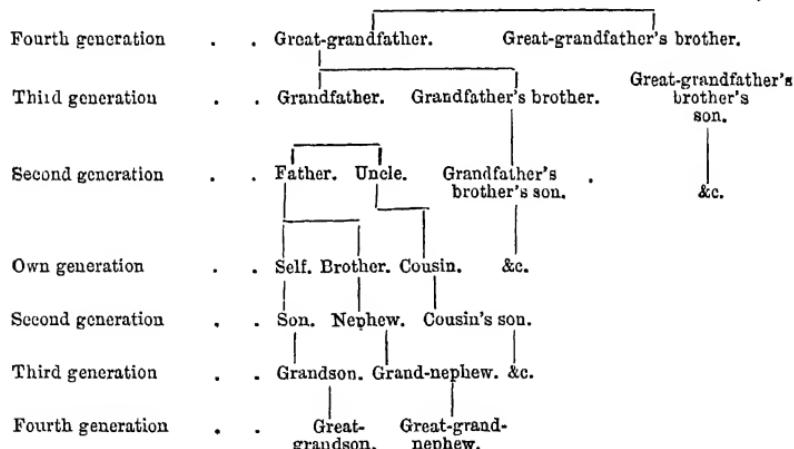
(a) Brother and uncle's son are in one's own generation.

- (b) Father and uncle in the second generation upwards.
- (c) Brother's grandson in the third generation downwards.
- (d) Great-grandson in the fourth generation downwards.
- (e) Great-grandfather in the fourth generation upwards.
- (All tribes.)

*Notes.*—The only trace of a system of reckoning by degrees was, that some of the Dhúsars knew that there is such a system of reckoning as that of Act X of 1865, as illustrated in section 24. Thus, they say a brother is in the second degree (*darja*), his grandson in the fourth, &c.; but they make no practical use of this system. The other tribes do not even know of it, nor can they be said to think of one man as “related by generations” to another. They never lose sight, however, of the generation in which one person stands with regard to another.

In calculating generations (*píri* = *pushtr*), as in calculating days, they include the man's own generation: thus, the father and son are in the second generation; the great-grandson in the fourth.

The following table shows how the generations are reckoned:—



And similarly with regard to relations through the mother, sister, and other female relations.

*Question 3.*—Into what classes are relations distributed? Specify each class, and the relations included in it. Give the distinctions, if any,—

- (i) between Sapindas, Sakulyas, Samánodakas, Bandhus, and Got-  
rajas;
- (ii) between personal, paternal, and maternal kindred;
- (iii) between legal sharers and residuaries, near and distant kindred (*karibí* and *báidí*), lineal and collateral relations.

What relations are included in the terms *shurkaián jadí* and *hissadárán karíbí*?

*Answer 3.*—There is no custom of distinguishing between—

- (1) Sapindas, Sakulyas, Samánodakas, Bandhus, and Gotrajas,
- (2) or personal, paternal, and maternal kindred,
- (3) or legal sharers and residuaries, near and distant kindred, lineal and collateral relations, *shurkaián jadí* and *hissadárán karíbí*.

(All tribes.)

*Notes.*—The classes of relatives under the Hindú law are not known even to the Bráhmans; and most of the Hindú tribes, although they offer the *pind* to their ancestors, and say there are seven persons to whom it is offered, cannot say with certainty which are the seven.

Most even of the Musalmáns know nothing of the distinctions made between classes of relatives by the Muhammadan law. Some of the Shekhs, Sayads, and Patháns have a vague idea of the meaning of these terms, but none of them are acted on in practice. In tribes which are divided into *góts*, the limits of the *góts* are well known, and always kept in mind; but this can hardly be said to be a classification of relatives. Perhaps relatives may be said to be divided into the great classes—first, males related through males only; and second, females and persons related through a female. According to the strict old custom, only the first class could inherit. They differ from the *agnates* of the Roman law only in this, that females related through males only were included among the *agnates*; but here, according to old custom, females can never inherit, and should be included in the second class. A man belongs to his father's *góbt*; and as a woman cannot marry in her own *góbt*, her children must be of a different *góbt* from her own—that is, her father's. Thus, all males related through males only are of the same *góbt*; and when a female comes in the chain the *got* is changed. The strict old rule of inheritance is, therefore, generally thus expressed: The property cannot leave the *góbt*."

*Question 4.*—Is your tribe divided into sections? If so, by what Tribal organization. names are the sections known? Does each section depute one or more representatives to the *jirga*? If so, what are such representatives called?

Has any particular person or family the right to be so deputed?

*Answer 4.*—There is no regularly-constituted *jirga*, or assembly to which sections of tribes depute representatives. When any caste question requires to be disposed of the chief man of the tribe in the neighbourhood summons a *pancháyat* of the tribe, which is attended by tribesmen from the neighbouring villages, but no particular person or family has a special right to be present. There are no definite rules as to the persons who are to attend the *pancháyat*, or as to the mode in which the business before it is to be discussed and disposed of. Everything is vague and indefinite, but the *pancháyat*, guided generally by the opinions of the older and more respectable tribesmen present, usually comes to a decision, which is acquiesced in by all. The most common questions which come before a *pancháyat* are those relating to betrothal or marriage, the most important, perhaps, being the not uncommon case of a man's marrying a woman of another tribe, when a *pancháyat* is assembled to compel him to part with her, or to pronounce him outcaste. If a man be thus excommunicated, no one of his own tribe, except such as have been similarly outcaste, will eat, drink, or smoke with him, or give him his daughter in marriage; and had the tribesmen their will they would deprive him of all his civil rights.

The most important sub-division of the tribe (*jat*, *zát*, *gáum*) is the *gót*, a distribution based upon the tradition of common descent.

Each *gót* is supposed to be descended from one particular ancestor, from whom, generally, it derives its name: all persons descended through males only from that ancestor are of the same *gót*, which, therefore, consists of agnates only. Almost universally among Hindús, and among Hindús who have become Musalmáns, a man is prohibited from marrying in his own *gót*; so that here too, as in the Roman family system, a woman ends her branch of the family; for her sons will be of the *gót* of their father, and therefore of a different *gót* from hers. The *gót* resembles in many of its features the Roman *gens*; and, although the name of the *gót* does not form part of the ordinary name of the individual, they always remember and note to what *gót* he belongs. According to the strict old custom, a man could not adopt as a son any one of a *gót* different from his own, so that there was no way in which an outsider could be introduced into the *gót*; but now generally a man is allowed to adopt a person related

to him through a female, such as his daughter or sister's son. In such a case the *göt* of the person adopted does not seem to be changed, but his children are considered to be of the same *göt* with the adopter of their father—that is, of the *göt* of their adoptive grandfather. This distinction into *göts* is very important in matters of marriage and inheritance.

"A man must not marry a woman of his own *göt*," and "the property must not leave the *göt*," are two maxims of very general application.

All Hindú tribes which have become Musalmán keep up the distinction into *göts*; and even those tribes which claim a pure Musalmán descent, many of them, call their sub-divisions by the name of *göt*. Thus, the Patháns, although they say that properly their sub-divisions are called *zai*, yet generally know them as *göts*; so, with the Shekhs and Mughals. The Beloch call their sub-divisions *tuman*.\* There are other sub-divisions of the tribe. The Bráhmans, while they seem to have no name to embrace the whole tribe, call their sub-tribes *ját* (= *zát*). These *játs*, while they are admitted on all sides to be Bráhmans, are to all intents and purposes separate castes, and will not intermarry. They are sub-divided into *göts*, and these again into *al*,—a local distribution based on the tradition of common local origin; the place from which the *al* is supposed to have sprung generally giving its name to the *al*. In some cases the *al* has usurped the importance of the *göt*; and the restrictions as to marriage, generally attaching to the *göt*, have been transferred to the *al*. The Káyath tribe is similarly sub-divided. The Banya or trading class consists of several distinct tribes, one of which, the Agarwálá, consists of two sub-tribes—the Bísás, or pure Agarwálá, and the Dasás, or half-breeds. These form for all practical purposes distinct castes, as do the Dharúkras, an offshoot from the Bráhmans, and the Dasá Tagas, a branch of the Tagas, who have, like the Dharúkras, adopted the custom of remarriage of widows. The Meos call their twelve largest *göts* *pál*, and a thirteenth is called *palakhra*. The Rájputs have a sub-division resembling the *al* of the Bráhmans, intermediate between the *göt* and the family (*ghar* or *khándán*) called the *thámbá*. This, too, is based on common descent, and simply means a branch of a *göt* consisting of a number of nearly-related families. The Fakírs are divided into *firkas* or *giroh* named after their spiritual leaders.

\* It is interesting to note that *tuman* is the word for the whole tribe in Dera Gházi Khan, where the Beloch Chief is a *Tumandar*.—C. L. T.

Possibly the *al* among the Brahmáns and the *thámbá* among the Rájpúts are incipient *gôts*, and the now general sub-division of tribes into *gôts* may have arisen in somewhat the same way. As above noted, the *al* bears a distinct name; and in some cases has become so much like a distinct *gôt* that men forget their *gôt* and go by their *al* only. Among the Dhúsars, the *gôt* is sub-divided into *kuldevis*, or collections of families worshipping the same family god. These, too, may possibly develop into distinct *gôts*. In calculating the prohibited degrees of marriages, the *kuldevi* takes the place of the *gôt*.

Among the Meos, the *páls* are, some of them, divided into *thoks*, which used to have among themselves distinctions as to giving and taking in marriage.

#### PART I.—SECTION II.

##### BETROTHAL.

*Question 1.*—In the case of persons between whom marriage is lawful, who can make the contract of betrothal?

Parties and consent.

State whose consent is necessary to the validity of a betrothal—

- (1) where both parents of the person to be betrothed are living;
- (2) where the father is dead, but the mother and brothers, whether of full age or minors, are living;
- (3) where the mother is living and there are no brothers;
- (4) where both parents are dead.

*Answer 1.*—The consent of the relatives to a contract of betrothal of a minor, whether boy or girl, or of an adult female, is required in the following order:—

- (1) The father's father ; (2) the father ; (3) the mother ;
- (4) the elder brother, if of full age ; (5) the father's brothers ;
- (6) the father's brother's sons, &c. ; and, failing paternal relations, the mother's father or brother can conduct the contract. (Sayads, Shekhs, and Patháns.)

The same, except that the brother of full age can overrule the mother; and if there be no brother of full age, the mother must consult the father's brothers. Mughal, Beloch, Khánzada, Rájpút, Gaurwa, Ját, Gújaz, Meo, Banya, Dhúsar, Kayath, Taga, Ágrí, Ját Musalmán, Malláh, Fakír, Ahír, and Bráhman.

*Notes.*—The right to consent to betrothal goes much in the same order as do guardianship and inheritance. But really there is no clear well-defined custom regulating the matter and making it certain that one relative has the power to overrule the others: usually the whole family assembles to

discuss a matter of this nature, and comes to an agreement about it, the wish of the elder members generally carrying the day. There are very few instances of a dispute about the person with whom a betrothal is to be made ; and there is nothing in the mode in which such disputes have been settled to show that it was right, not might, which carried the day. It is unusual for a woman to conduct the ceremonies of betrothal, that is, to send the barber to engage a boy for her daughter ; but instances are found in which a widow, managing for her minor children, did so make the contract of betrothal, with or without consulting her husband's male relatives related through males.

*Question 2.*—At what age can betrothal take place ?

*Answer 2.*—There is no restriction with respect to age. A betrothal can take place at any age after birth. (All tribes.)

*Notes.*—Instances are given of children being betrothed at all ages, from the day of their birth to the age of 40 or more. The commonest age is from 5 to 7 ; and few children are not betrothed before the age of 13. Some object to a child's being betrothed earlier, because it is not weaned till the age of three, and then is still subject to the diseases of childhood. Usually the boy is a little older than the girl ; but this is not necessary. Sometimes the girl's age is concealed, as it is considered a disgrace to allow a girl to grow up unmarried. The age at which betrothal takes place depends much on the means of the family.

*Question 3.*—Can a person consent to his or her own betrothal ; or is it in every case necessary that parents or guardians should consent on behalf of the child, or ward, whether male or female ?

Can a widow consent to her own betrothal, whether or no there be living male near kindred of her deceased husband ?

*Answer 3.*—A minor, whether boy or girl, cannot make a contract of betrothal : the consent of the relatives is necessary.

A man of full age can make his own contract of betrothal. A girl, though of full age, cannot make her own contract of betrothal : the consent of the relatives is necessary. A widow goes through no form of betrothal before remarriage. (All tribes.)

*Note.*—Usually the contract of betrothal, even of a man of full age, is made by his father or uncle, if he be alive. But if the man himself made it, even against his father's wish, it would not be invalid.

Formalities.

*Question 4.*—Describe the formalities which are observed upon a contract of betrothal.

Is there any distinction between formalities after which the betrothal is reversible and formalities which are absolutely binding?

Describe in full detail the formalities which are essential to the contract.

Is it necessary to employ *lagís* or others; or can all ceremonies be performed by the relations of the parties concerned?

*Answer 4.*—The usual formalities of a contract of betrothal are as follows.

The father of the girl sends his family barber (*nái*) and priest (*Purohit Bráhman*), or, if he be a Musalmán, his musician (*dom—mirásí*) or one of these, to search among the families of his acquaintance for a boy who will be a suitable match. They visit several families, and on their return report where they have found a suitable boy, and if horoscopes (*tewá—janampatrí*) are kept, bring his horoscope for comparison with the girl's. If there appears to be no objection to the match, and the girl's father approves of it, he sends his barber and priest, or musician, again to the boy's house with the signs of betrothal, called among Hindús *tiká* or *sikká*, and among Musalmáns *nishání*. If the boy's father approves of the match (no public enquiry is made about the girl, but the women find out among themselves), he calls together his kindred; and before them the messengers from the girl's house (called *negí*, as being entitled to the *neg* or *lik*—betrothal fees) put the signs of betrothal into the boy's lap, and usually some sweetmeats (*batáshe*) into his mouth, at the same time announcing the name of the girl with whom the betrothal is made. The signs of betrothal vary; but there is almost always a rupee, often a cocoanut, sometimes clothes, or a ring. If the boy be a Hindú, the girl's barber or priest makes the forehead mark (*tiká*) on the boy's forehead with his thumb; and during the ceremony the boy is seated on a wooden plank (*chauki—patrí*) raised a little off the ground, on which, after sweeping it and smearing it with cowdung (*gobar*), a square has been traced out (*chauk puráná*) with flour.

The binding ceremony is the placing of the signs of betrothal in the boy's lap before his assembled kindred. (Ahír, Malláh, Bráhman, Gújar, Ját, Gaurwa, Rájpút, Káyath, Banya, Dhúsar, Taga, Fakír, Khánzáda, Meo.)

Of these tribes, among the Ahírs, Bráhmans, Gaurwas, Rájpúts, Khánzádas, it is necessary to send a *negí* (also called *haqdár*), barber, priest, or musician. Among most of the

other tribes the father or other relative can himself conduct the betrothal, the contract being in such a case usually made by the girl's father's placing a rupee in the boy's hand. Sometimes, especially among the Meos, Játs, and Gújars, the girl's father literally sells his daughter for a price.

Among the Beloch, the contract is arranged among the relatives themselves, and is made binding by a rupee being given to the boy on the girl's part, and to the girl on the boy's part.

Among the Sayads and Shekhs, the signs of betrothal are taken by the girl's relatives and barber, and given to the boy's father.

Among the Patháns and Mughals a verbal agreement is sufficient to make the contract binding between persons already related. Sometimes the initiative is taken by the boy's father. A rupee is usually given to the boy.

The giving of a rupee to the boy to make the contract of betrothal binding is almost universal.

The cocoanut (*náriyal*) is used in betrothal by the Ahír, Bráhman, Ját, Gaurwa, Rájpút, Káyath, Taga, Malláh. The ring (*angushtri* or *chhalla*) is used in betrothal by the Khánzáda, Sayad, Shekh, Banya, Dhúsar, Fakír.

*Question 5.*—Is a man who has contracted a betrothal entitled to marry another woman before he marries her to whom he was first betrothed? Or does priority in betrothal entitle the female to priority in marriage?

*Answer 5.*—A man who has contracted a betrothal is not entitled to marry another woman before he marries her to whom he was first betrothed. (All tribes.)

*Note.*—If he does marry another woman first, it would seem to make the contract of betrothal voidable at the option of the betrothed girl and her relatives.

*Question 6.*—Upon what grounds can a contract of betrothal be annulled?

Annulment.

State whether—

- (1) impotence,
- (2) immorality,

of either party are considered sufficient grounds for annulment.

*Answer 6.*—The following grounds are considered sufficient for the annulment of a contract of betrothal:—(1) blindness; (2) leprosy, paralysis, or other incurable disease; (3) impotence; (4) impurity of descent; (5) becoming an outcaste; (6) change of religion; (7) gross immorality; (8) insanity. (Khánzáda, Beloch, Sayad, Shekh, Mughal, Pa-

thán, Ahír, Bráhman, Ját, Taga) : among Rájpút, Meo, Gaurwa, Gújar, Banya, Káyath, Malláh Fakír, the same, except that immorality is not held a sufficient reason.

Among Dhúsars the same, except that they say that no fault in the girl occurring after betrothal and no fault discovered before the betrothal is a sufficient ground for annulling the betrothal.

*Notes.*—There seems some doubt as to whether blindness would be considered a sufficient ground for annulment, unless the party was blind before the betrothal and the other party was kept ignorant of the fact.

Indeed, some tribes say that deceit of any kind, such as concealing the age of the girl where she is older than the boy, would be sufficient ground for annulment. A contract of betrothal is rarely broken off for immorality, as the parties are generally too young up to marriage to develop any immoral habits.

I understand that in no case would a court compel either party to complete the marriage against his or her will. This would probably be held contrary to equity and good conscience. I understand that the present question is put with a view to ascertain in what cases damages for breach of the contract of betrothal should be refused ; and no doubt the court would in such a case not allow equitable reasons for annulment, such as immorality (which perhaps a *pancháyat* of the tribe might consider an insufficient reason), to be held insufficient.

*Question 7.*—If a betrothal be annulled—

- (1) at the request of the intended bridegroom or his family,
- (2) by mutual consent,

are the expenses incurred repayable to the person who discharged them ?

*Answer 7.*—When a betrothal is annulled at the request of the intended bridegroom or his family, or by mutual consent, neither party is bound to repay the expenses incurred by the other ; but any jewels which have been exchanged are returned. (All tribes.)

*Notes.*—I suppose that where the parties annul the contract by consent, the court would hold them to the terms agreed on by them as the conditions of the annulment ; that where one party, without the consent of the other, breaks off the contract for a reasonable objection, the court would not enforce the payment of the expenses of the other party, but would order the return of jewels, &c., or their equivalent ; and that where one party, against the will of the other and

without reasonable excuse, breaks off the contract, the court would decree return of the jewels, payment of the reasonable expenses, and damages for the breach.

It may be as well to note the ideas of the people generally on the subject of betrothal.

A girl is looked upon as a valuable piece of property ; and betrothal is considered as a contract to transfer the ownership of the girl to the boy's family when she reaches a marriageable age. If the boy die, and the girl be married to another boy of the same family, the ceremony of betrothal is not repeated ; but if, for any reason, the girl be married into another family, the ceremony of betrothal is repeated. A girl once married cannot again be betrothed according to the ceremonies of a first betrothal. If the custom of her tribe allow the re-marriage of widows, she is married by the form of *karáo* (which, indeed, is hardly any form at all) if a Hindú, and by the simple *nikáh* if a Musalmán, without any of the elaborate ceremonies of a *shádí*, or first marriage. A man, however, after his first marriage, and even during the lifetime of his wife, may go through the regular forms of betrothal (*sagái*) and marriage (*shádí*) with another girl. His former marriage does not alter his status, as it does that of a girl.

The advantage of the contract seems to be considered as being chiefly on the boy's side, in having secured a piece of valuable property ; little is thought of the girl's claim on the boy, and only in very exceptional circumstances would the boy's family refuse to find a match for her. The tendency is all the other way. If the girl die, the contract is void, and neither party has any further claim on the other ; though it would be considered "nice" if the boy were to marry the girl's sister or another member of her family. But the contract is by no means cancelled by the boy's death. It is the boy's family, not the boy himself, that have bargained for the girl ; and their right to get possession of her when she becomes marriageable remains, though the boy to whom she was first contracted may have died. She must marry another boy of the same family, unless they agree to give her up. Although the Judicial Commissioner in his circular No. 102D., dated 30th October 1858, laid down that contracts of betrothal should be considered strictly personal, and voided by the death of either of the betrothed parties as by the act of God, most of the tribes do not agree with him ; and usually a *pancháyat* would insist on the girl's father marrying

her to another of the boy's family, or paying satisfactory damages. And, although it may be admitted that it would be contrary to equity and good policy to compel marriage of the girl against her will or her father's, there seems no reason why, if this condition, which the people certainly consider attaches to the contract, be broken, the girl's father, who breaks it, should not be made to pay damages to the boy's family, which suffers by the breach. There would be nothing inequitable or inexpedient in thus far following an old and firmly-established custom of the people. It is questionable if the Judicial Commissioner's dictum is sufficient to deprive the contracting party of what is, by custom, their undoubted right. Among a few tribes, however, such as the Káyaths, Banyas, Dhúsars, and Tagas, the boy's father is considered to have no such right; and if the boy die the contract is considered void, and his family have no further claim on the girl. When the marriage has taken place the property in the girl has been actually transferred from the girl's family to the boy's family; and if he dies the boy's brother or other near relative has, in tribes in which remarriage is allowed, the right to marry her. Sometimes she is regularly sold to a stranger; and if she, against the will of her former husband's family, marries a stranger, a *pancháyat* of the tribe will compel him to give her up, or pay the former husband's family reasonable compensation—that is, a reasonable price for the woman. It would not be contrary to equity, and would certainly be consistent with the custom of many tribes and the ideas of the people generally, if the courts were to decree damages in favour of the former husband's family against the stranger who entices a widow away from their care, but probably section 7 of Act XV of 1856 which enacts that, in the case of a widow who is of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her remarriage lawful and valid, would be held to bar such a claim in the case of Hindú widows, even of those tribes in which, previous to the passing of that Act, re-marriage of widows was allowed by custom.

#### PART I.—SECTION III.

##### MARRIAGE.

Prohibited degrees.

*Question 1.*—Enumerate the relatives with whom marriage is unlawful.

*Answer 1.*—The Khánzáda, Beloch, Sayad, Shekh, Mu-  
ghal, Pathán, Fakír, and some Musalmán Gaurwas follow the  
Muhammadan law as regards prohibited degrees in mar-  
riage.

Among the Ahír, Bráhman, Taga, Ját (Hindú and Musal-  
mán), Hindú Gaurwa, Ágrí, and probably the Mallah tribes,  
as well as among some Musalmán Gaurwas, a man may not  
marry a woman belonging to any of the following *gôts* :—

- (1) his own *gôt*;
- (2) his mother's *gôt*;
- (3) his father's mother's *gôt*;
- (4) his mother's mother's *gôt*.

And the same prohibition applies to women.

Among the Gújars and Káyaths only the three *gôts* first  
enumerated are forbidden. A man may marry in his mother's  
mother's *got*. Among the Rájpúts, both Hindú and Musal-  
mán, a man may not marry a woman—

- (1) of his own *gôt*;
- (2) of his mother's *thámbá*;
- (3) of his father's mother's family, or grandfather's mo-  
ther's family, so far as the relationship is trace-  
able;
- (4) descended from his father's sister or father's father's  
sister, &c., so far as the relationship is traceable.

Among the Meos a man may not marry—

- (1) a woman of his own *gôt* or *pál*;
- (2) a woman of the village his mother belonged to, even  
though of a different *gôt*;
- (3) a woman of the village his father's mother belonged  
to;
- (4) any woman whose relationship with him is close  
enough to be traceable;
- (5) the daughter or descendant through males for two  
generations only of a woman of his own *gôt*.

Among the Dhúsars a man may not marry a woman—

- (1) of his own *kuldeví*;
- (2) of his mother's *kuldeví*;
- (3) of his father's mother's *kuldeví*;
- (4) of his mother's mother's *kuldeví*.

Among the Agarwálá Banyas a man may marry in any  
*gôt* except his own, even in his mother's *gôt*, and even in his

mother's family, provided the relationship be not very close. There is no distinct limit fixed.

*Notes.*—As great care is taken in comparing *gôts* and investigating relationship before betrothal and marriage, it is hardly possible that any case should arise in which, after the ceremonies of marriage have been performed, it is discovered that the parties are within prohibited degrees of relationship. No such instance has been given; but the general feeling is that in such a case the marriage, once completed, would be held valid and legal, and the offspring legitimate.

For a definition of the terms *gôt*, *pál*, *thámbá*, see answer 14. A *kuldeví* among the Dhúsars means a section of the tribe worshipping the same family deity. It is worthy of notice that there is some vagueness of idea, and probably indefiniteness of custom, about the prohibited degrees. For instance, among the Játs there was a great dispute about whether the prohibition extended to the whole *gôt* of the mother's mother or only to the village, house, or family; and some Játs maintained that a man must not marry in his stepmother's *gôt*, and perhaps not in his step-grand-mother's. Among the Bráhmans sometimes the prohibited degrees are calculated by the *al*, and not by the *gôt*, so that, although in marriage a man may have avoided (*bacháná*) the four *als* enumerated, he may not have avoided the four *gôts*. None of the Musalmáns can enumerate the prohibited degrees, but most of them obey the Muhammadan law in this matter. Indeed, it seems that even among some of those Musalmán tribes which adhere to the old Hindú marriage customs and the Hindú prohibited degrees, a marriage between two persons, allowed by the Musalmán but prohibited by the Hindú law, if made by the simple *nikáh* form, would be held valid. Especially is this the case among the Meos, among whom the law of Muhammad, like the religion, is gradually extending its influence in a purer form. Formerly there were distinctions about *páls* or *thoks* which would give daughters, but would not take them, in marriage from other *páls* or *thoks*; but these are now almost obsolete. The Malláhs are not sure whether they can marry in the *gôt* of their paternal or maternal grand-mother. It is worthy of note that the prohibited degrees are in no tribe the same as those given by Manu (see Macnaghten, chapter V). These seem to be as follows. A man may not marry a woman (1) of his father's *gôt*; (2) of his mother's *gôt*; (3) descended from his paternal or maternal ancestors within the sixth degree.

*Question 2.*—What physical defects will be sufficient ground for the annulment of a marriage which has actually taken place ?

State whether idiocy or lunacy, impotence, mutilation, are such sufficient grounds. Is any distinction made if the party seeking annulment knew of the defect at the time of the marriage, or if the defect has arisen after the marriage was consummated ?

*Answer. 2.*—No physical defects are considered sufficient ground for the annulment of a marriage which has actually taken place (Banya, Dhúsar, Ágrí, Ját Musalmán, Káyath, Taga, Malláh, Fakír, Rájpút, Áhír, Bráhman, Ját, Khánzáda, Meo, Gújar). No instance of the annulment of marriage which has actually taken place on the ground of a physical defect (Sayad, Shekh, Mughal, Pathán, Gaurwa, Beloch).

*Notes.*—Perhaps the Muhammadan law on this subject would be held applicable to persons married by the *nikáh* form.

It would seem that, in equity, if one party was impotent at the time of the marriage and the other party did not know of it, the marriage should be considered void. The Beloch say this is their custom, but can give no instance.

The Áhírs say that, even if one party becomes mad or develops an incurable disease, the marriage remains binding.

*Question 3.*—Are there any disabilities, other than those which arise out of blood-relationship or physical defect, which operate to bar marriage ?

Can persons of different castes intermarry ? If so, of what castes ? Can persons of different religions intermarry ? If so, of what religions ? May a man be married at the same time to any two women who stand in such a degree of relation to each other as that, if one of them had been a male, they could not have married ? May a man marry again a woman he has divorced ?

Does it make any difference if she have been married to another and divorced by him, or separated from him by his death in the interval between her divorce from her first husband and his second marriage to her ?

Is any distinction taken if the wife have not been three times irreversibly divorced ?

Are the degrees prohibited by consanguinity also prohibited by fosterage ?

Are there any exceptions to the rule ?

*Answer 3. (1) Religion.*—A man may not marry a woman of a religion differing from his own. (All tribes.)

*Note.*—There are instances of a Musalmán marrying a woman who was till then a Hindú ; but she is supposed to have become a Musalmán and is married by *nikáh*.

*(2) Caste.*—A man may not marry a woman of a caste

differing from his own (Ahír, Bráhman, Gújar, Ját, Gaurwa, Rájpút, Dhúsar, Banya, Ágrí, Malláh, Káyath, Taga).

*Notes.*—Although this is stated to be the custom by the above tribes, and their general ideas are that marriage with a woman of another tribe is illegal, yet there are instances (though comparatively rare) in which a marriage with a woman of a somewhat similar tribe was not considered illegal, and the children of such a marriage were allowed to inherit. But with these tribes such a union cannot be made by the ceremonies of a *shádí*, or first marriage. The only ceremony, if there be any ceremony at all, is that of the *karáo*, in which hardly anything but consent and cohabitation is requisite. In this sense—

A Gújar sometimes marries by *karáo* a Játñí or Ahírní.

A Ját sometimes marries by *karáo* a Gújarní, Ahírní, or Rájpútní; but he would not be allowed to keep in his house a Bráhmani or Chamári.

A Rájpút Musalmán may marry any Musalmán by the *nikáh* form; but it seems that, unless she be a Rájpútní her sons will be so far illegitimate that they will not be entitled to inherit.

If a marriage have taken place, even with all the ceremonies of a *shádí*, and it be afterwards discovered that the woman was of a caste which the man could not marry with the marriage is considered void from the first, and the offspring illegitimate; and the woman is turned out of the house, or retained as a concubine, or kept separate and given maintenance only.

A Khánzáda may marry a woman of his own caste or a Pathání or Musalmán Rájpútní.

A Beloch man may marry a woman of another tribe, such as a Shekh or Musalmán Rájpút; a Beloch girl may not marry any but a Beloch.

A Sayad man may marry a woman of another tribe; a Sayad girl may not marry any but a Sayad.

A Shekh may marry into another tribe; so may a Pathán or a Mughal.

A Meo may marry any Musalmán woman by the bare *nikáh* form; but he cannot marry any but a Meoní by the full ceremonies of a *shádí*.

A Fakír may marry any Musalmán, but usually marries a Fakírní.

A Ját Musalmán may marry a Musalmán Ját, Gaurwa, Gújar, or Rájpút.

(3) *Relationship to first wife still alive.*—No Musalmán can, during the duration of his marriage with one woman, marry her sister or any woman so related to her that if one of them had been a male they could not have married. (All Musalmáns.)

Any Hindú may, during his marriage with one woman, marry her sister or any relation of hers of the same generation. He may not marry a relation of hers of a higher or lower generation. (All Hindús.)

*Note.*—It is by no means uncommon among Hindús for a man to marry two sisters at one time, both girls going round the nuptial fire with him. In such a case it generally is because one of them is blind or has some other physical defect which would prevent her from getting a match by herself; and she is thrown into the bargain as it were with her more lucky sister. The general feeling is that a girl must be married at all events, and if she have any serious defect and cannot be otherwise disposed of some one is bribed to take her. When a man after his first marriage and during his first wife's lifetime marries her sister or cousin, it is usually because she has given him no son; and he generally obtains her consent first.

(4) *After divorce.*—No instance of a man's having married again a woman he has divorced. (All tribes.)

Among Musalmáns divorce is still uncommon; but no doubt the Muhammadan law regarding divorce and re-marriage of a divorcée would apply to them.

Among Hindús there is no divorce proper; but sometimes a man expels his wife. No doubt if he took her back again there would be nothing to prevent his doing so, but it could hardly be called re-marriage.

(5) *Relationship by fosterage.*—There is no instance of a man's having married a woman to whom he was related by fosterage.

*Note.*—Usually a child, if not suckled by his own mother, is nursed by a relation so near that he could not in any event have married any relation of hers, or by a hired woman of a different caste, whose relations he could not marry for difference of caste. No doubt the Muhammadan law on the subject would apply to Musalmáns.

Between how many parties.      *Question 4.*—How many wives are allowed?

*Answer 4.*—No Musalmán can have more than four wives alive at one time. (All Musalmáns).

There is no limit to the number of wives which a Hindú may have at one time. (All Hindús.)

*Notes.*—Even among Musalmáns it is uncommon to have more than one wife; and the usual reason for marrying a second is that the first has no son.

Among Hindús the largest number of wives alive at one time at present known in the district is seven, all equal wives of an Ahír.

The usual reason for marrying a second wife is that the first has no son; and even in such a case it is thought proper to obtain the first wife's consent before marrying again; but that is not absolutely necessary. The expense of a *shádi* generally puts a limit on the number of wives a man marries by that form; but among tribes which allow *karáo*, a man often marries more than one of his relation's widows by that form, in addition to his first wife, married by the regular form.

Age.                      *Question 5.*—At what age may marriage take place?

*Answer 5.*—There is no limit to the age at which marriage may take place. (All tribes.)

*Note.*—Both among Hindús and Musalmáns there are instances of children being married at the age of five. The usual age is from seven to twelve; only in very rare cases is a girl unmarried at twenty, for it is thought disgraceful (or likely to lead to disgrace) to have an unmarried grown-up daughter. Indeed bachelors of twenty are rare. The age at which marriage takes place depends a good deal on the ability of the families to bear the expense of the ceremonies.

By whose consent.

*Question 6.*—Whose consent is necessary to the validity of marriage? Give the rule—

- (1) if both parties are minors,
- (2) if both parties are of full age.

Can the woman consent to her own marriage without the consent of her guardian?

*Answer 6.*—The consent of the same persons is necessary to the validity of marriage as is necessary to the validity of betrothal (see section II).

A woman cannot consent to her own marriage without the consent of her guardian. (All tribes.)

*Notes.*—Among Hindú tribes which allow of the remarriage of widows, it is usual for the widow to marry her husband's brother or near relative; and custom requires that

before marrying a stranger, she should obtain the consent of her former husband's relatives. If she cohabits with a stranger without their consent, usually a *pancháyat* will make him give her up or pay a price for her. But Act XV of 1856, section 7, enacts that in the case of a widow of full age, or whose marriage has been consummated, her own consent shall be sufficient consent to constitute her remarriage lawful and valid; and if she is a minor whose marriage has not been consummated, she shall not remarry without the consent of her father or his relatives (not, as the custom is, her former husband's relatives).

Among Musalmán tribes generally the consent of the former husband's relatives, who are the guardians of the widow, is required to make the marriage valid.

*Question 7.*—Do you observe any of the eight forms required by the strict Hindú law. If so, which forms; and Formalities. with what, if any, modification? Describe in full the usual ceremonies, and specify any particular ceremony which is regarded as making the tie indissoluble.

*Answer 7.*—Not even the Bráhmans know what are the eight forms required by the strict Hindú law. Among Hindús only two forms of marriage are known. First, the regular marriage (*shádí byáh*), with all its elaborate ceremonies, most important of which is the ceremony of the *pphere*, or seven turns round the sacred fire.

This is the form practised in the case of a girl's first marriage in all Hindú tribes, and is the only form allowed by those tribes in which the re-marriage of widows is not allowed by custom. It seems to correspond with the Bráhma ceremony described by Manu. The second form is practised only among those tribes which allow the remarriage of widows, and requires none of the elaborate ceremonies of the *byáh*. It seems sufficient that the parties should consent to cohabit with each other, and thus the *karáo*, as it is called, seems to correspond with the Gándharva form of marriage described by Manu.

Among the Musalmáns there is a similar distinction. In the celebration of the *shádí*, or full-caste marriage, the *nikáh*, or Musalmán form of marriage, which is the really binding ceremony, forms one only among many elaborate ceremonies which are very similar to those practised by the Hindús; and are evidently, in the case of converted Hindús, a relic of their old customs, and in the case of purer Musalmáns, such as the Sayads, borrowed from their

neighbours. But in the re-marriage of a widow, or in marrying a woman of another tribe (at least among converted Hindús), the only ceremony is the *nikáh*, which in such a case some call by the name of *karáo*, like the corresponding form among the Hindús. Some of the many ceremonies performed on the occasion of a full-caste marriage (*shádí*) are detailed below. They are, with slight variations, performed by all Hindú tribes; and with the exception of the *phere* ceremony, the place of which is taken by the *nikáh*, by all Musalmán tribes also.

(1). *Pili chithí*—the yellow letter. This is a notice, written on paper smeared over with turmeric, proposing a date for the marriage, sent by the girl's father to the boy's father by the hand of the family barber. When a date has been finally fixed on the girl's father sends the—

(2) *Lagan*—the date. This also is a letter containing a notice of the date agreed on, and is sent by the family priest or barber to the boy's father. It is generally accompanied by some copper or silver money, betel-nuts, turmeric, sacred grass, and sometimes a red thread, with knots on it corresponding to the date agreed on. These things are given by the messenger to the boy before his assembled relatives.

(3) *Tel bán*—the cleansing ceremony. The boy and girl are, for a few days before the marriage, rubbed over with a mixture of oil, turmeric and flour to purify them.

(4) *Barát*—the marriage procession. The boy's father gathers his relatives together, and, taking the boy, starts off, in as grand a procession as he can form, for the girl's village, at the outskirts of which they are received by the girl's relatives in ceremonious fashion, and conducted to a place set apart for them for rest and refreshment.

(5) *Bárothí*—the threshold ceremony. The boy is taken to the threshold of the girl's house, and is there welcomed by the girl's female relatives, one of whom waves round his head a tray containing a small lump of flour and melted butter with other things.

(6) *Phere*—the turns round the fire. This is among Hindús the important ceremony which makes the marriage binding. It almost invariably takes place at night under an awning specially prepared in the courtyard of the girl's house. The relatives of both parties gather there, and when the sacred fire (*hom*) has been properly prepared the boy and girl, with their clothes knotted together, are made to go round

the fire seven times,—at first the boy in front, and then the girl in front,—while the Bráhmans representing both parties repeat the marriage vows and perform other ceremonies. The boy and girl are then made to sit down, the girl being at the wife's place on the left hand of the boy; and the girl's father gives away the girl to him by placing her hand with a copper or silver coin, a little water and some grains of rice in his, while the Bráhman pronounces the formula of gift (*sankalp*.)

(7) The *badhár*—the marriage feast—takes place the following day; and on the day after that, when the dowry has been presented, and the parties have exchanged presents, the marriage procession starts back again, taking with it the girl, who remains for a few days in the boy's house, and then returns to her father until puberty.

The binding ceremony is the *phere*, or turns round the sacred fire.

Among the Musalmáns its place is taken by the *nikáh*, which is performed with all the formalities of Muhammadan law by a kází or his deputy.

For a description of the *karáo* form, see answer 15.

*Question 8.*—Who are competent witnesses to a marriage contract between Musalmáns.

Are there any special requisites to the competency of such witnesses?

*Answer 8.*—The witnesses to a marriage contract between Musalmáns must be adult male Musalmáns. There are no special requisites. (All Musalmáns.)

*Note.*—The Sayads say that no witness is necessary to a marriage between Shiahhs.

Witnesses generally are relations of the bride or shrine-attendants.

*Question 9.*—Will contracts entered into by a married woman, the subject of such contracts, being other than Effects. her peculiar property, be binding on herself or her husband?

Is any distinction made if the contract may have been requisite to her obtaining the necessaries of life.

*Answer 9.*—A contract entered into by a married woman in the absence of her husband, if requisite for obtaining the necessaries of life, or to pay the Government revenue, is binding on herself and her husband as regards his moveable property. (All tribes).

The immoveable property she may in such necessity mortgage, but she cannot sell it (Meo, Bráhman, Gújar, Ját).

A married woman can in no case enter into a contract regarding immoveable property (Rájpút, Dhúsar, Banya, Taga, Káyath, Agrí, Ját Musalmán, Malláh, Fakír, Gaurwa, Khánzáda, Beloch, Sayad, Shekh, Mughal, Pathán, Ahír).

*Note.*—When a married woman's husband is absent, and she has to contract debt to supply herself and her children with necessaries, to pay the Government revenue, or to marry her children, she should apply to her husband's relatives for help; and if they cannot, or will not, aid her, she may enter into a contract which will be binding on her husband. Probably, even in the case of the latter tribes, if a woman mortgaged her husband's land for necessities, and received value in return, the courts would in equity hold the contract binding on the husband.

#### DIVORCE.

Grounds.      *Question 10.*—Upon what grounds may a wife be divorced?

Is change of religion a sufficient cause?

May a husband divorce his wife without assigning any cause?

*Answer 10.*—No instance, in any tribe, of a wife having changed her religion. No custom of divorce among the following tribes:—Ját Musalmán, Fakír, Rájpút Musalman, Gaurwa Musalmán, Beloch, Sayad, Shekh, Mughal, Pathán.

A wife may be divorced for misconduct or because her husband and she disagree. A husband may not divorce his wife without assigning any cause (Khánzáda, Meo).

*Note.*—No doubt in these Musalmán tribes in which the marriage-tie is fastened according to the Muhammadan law by the form of *nikáh*, it would be held that it may be loosened in the modes allowed by that law.

While all the Hindú tribes assert that they have no custom of divorce, it appears that when the wife is unchaste, the husband sometimes expels her from his house, and will have no more to do with her. This is called *tyág*, and practically amounts to divorce. Unchastity is the only sufficient ground for such an expulsion.

*Note.*—Among the Játs if a wife so expelled goes and lives with another Ját and bears sons to him during her first husband's lifetime, they will be considered legitimate sons, and will share in their father's property. The Játs say this is their custom, and it has been so held by the Chief Court (No. 851 of 1877).

*Question 11.*—What are the formalities which must be observed to

Formalities. constitute (1) a revocable, (2) an irrevocable divorce?

Do you distinguish between *tilák* and *khola*? If so, what is the distinction?

*Answer 11.*—Among the Khánzádars and Meos, the only tribes which have any custom of divorce, *khola* is unknown. The only form of divorce known is the *tilák*, which becomes irrevocable by the husband's saying three times before competent witnesses that he gives up his wife and puts her away from him.

*Note.*—No doubt, as the custom is not very general, and is evidently an attempt to follow the Muhammadan law, the law would be held to overrule the custom, should either party claim to follow the law.

*Question 12.*—Has the divorced or superseded wife any claims against her husband? If so what—for maintenance Effects. or for a specific share of his property? Does she lose such claims if she be divorced on the ground of adultery?

*Answer 12.*—Among the Khánzádas and Meos, the only tribes which have any custom of divorce, the wife is entitled to be paid her dower, and has no further claim.

A Hindú wife, expelled for unchastity, has no claim for maintenance, or for a share of her husband's property. A wife, who has only been superseded by her husband's marrying another wife, remains in his house as his wife, and is entitled to maintenance.

Release. *Question 13.*—Upon what grounds has a wife the right to claim release from the marriage-tie?

*Answer 13.*—A wife can in no circumstances claim release from the marriage-tie. (All tribes.)

*Question 14.*—Explain what is meant by dower (*kabin*). State when it becomes payable,—whether on consummation or Dower. the death of the husband or on divorce.

Is it payable in the case of divorce on the ground of adultery?

*Answer 14.*—No custom of dower. (All Hindú tribes.)

Dower is mentioned at the time of marriage, but is never paid (Fakír, Ját Musalmán, Rájpút Musalmán, Gaurwa Musalmán.)

Dower is the sum of money fixed at marriage to be paid by the husband to the wife in return for the marriage, but it is rarely paid at any time (Beloch, Khánzáda, Shekh, Sayad, Mughal, Pathán, Meo).

*Note.*—As there is no clear custom, and evidently only an attempt to follow the Muhammadan law, probably a court would decide according to the law in this matter. There is no instance of any but the legal dower of ten *dirms* (which they consider equal to 32 rupees and some annas) being agreed on; and no doubt that is mentioned only because it comes in the marriage service.

Karewa marriages.      Question 15.—Explain the custom of *karewa* or *chadar andazi*.

What is the distinction between such marriages and marriages of the ordinary kind?

In what castes or tribes does the custom obtain?

What period, if any, must elapse after the death of the first husband before the *karewa* of the widow is permissible?

*Answer 15.*—*Karáo* is the re-marriage of a widow or deserted wife, who has been previously married by the full ceremonial of a caste-marriage (*shádí*), and therefore is disqualified from being again married by that form. The only ceremonies performed at a *karáo* are that before the assembled kindred she and her new husband announce their intention of living together as man and wife; and a red sheet (*chadar*), such as only married women whose husbands are alive wear, is put on her, and she has bangles (*chúri*) put on her wrist, and thereafter lives with her new husband, but even this much ceremony is not necessary.

Where, as in the commonest case, a widow marries her husband's brother, consent and cohabitation are all that is required; and the outer world know of the marriage only by seeing the widow again assume the red sheet and bangles, which are not worn by widows. Even if a child be born before the marriage is announced, it will be considered legitimate if the husband's brother admit it is his. There is no distinction made between the offspring of a marriage by *karáo* and that of an ordinary marriage (*shádí*). The sons all inherit as legitimate.

A widow should not re-marry within a year after the death of her first husband; but it is not necessary to wait this time.

The different tribes of Hindús think it an important distinction whether they allow re-marriage of widows or not. The following tribes do not practise remarriage of widows, and therefore have no custom of *karáo*: (1) Bráhman, (2) Taga, (3) Rájpút, (4) Dhúsar, (5) Káyath, (6) Banya.

The following tribes do practise re-marriage of widows

by *karáo*: (1) Ahír, (2) Ját, (3) Gaurwa, (4) Malláh, (5) Agrí, (6) Gújar.

Some Bráhmans who have adopted the custom of re-marriage of widows have been outcaste and form a practically separate caste called Dharúkra. So with some Tagas who allow *karáo* and are called *Dasá*, or half-blood (though really of pure Taga blood), as a practically distinct caste. On the other hand, some Ahír families do not allow re-marriage of widows, and keep themselves apart from the other Ahírs. So with some Ját families, while other Ját families allow widows to remarry, but not with the husband's relatives.

Among tribes which practise *karáo*, the Ahírs and Gaurwas do not allow a widow to marry her husband's elder brother; but she may marry her husband's younger brother, or, with the consent of her husband's relatives, a stranger. Among the Játs, Gújars, and Malláhs, a widow may marry her husband's elder brother; but it is considered more proper for her to marry the younger brother. A widow cannot be compelled to re-marry.

The customs and ideas of the Hindú tribes have infected the Musalmán tribes also. The following Musalmán tribes say they have no instance of a widow's re-marriage : (1) Rájpút Musalmán, (2) Gaurwa Musalmán, (3) Sayad.

The following say it is only lately that widows have married again : (1) Beloch, (2) Shekh, (3) Pathán, (4) Mughal, (5) Khánzáda.

Among these and the other Musalmán tribes, when a widow remarries, she does not go through the full *shádí* ceremony, but is married by the simple *nikáh* only.

*Question 16.*—Is marriage ever presumed from cohabitation, although the full ceremony may not have been performed? If so, amongst what castes of tribes?

*Answer 16.*—Among all Hindú tribes which do not practise *karáo*, marriage is never presumed from cohabitation only. The regular ceremonies must be known to have been performed.

*Note.*—Owing to the elaborate ceremonies of marriage and the assembling of the brotherhood to witness them, there can never be any doubt as to whether the ceremonies have been performed or not.

Among all Musalmán tribes marriage is never presumed from cohabitation only. The *nikáh* must be known to have been performed.

Among the Hindú tribes which allow re-marriage of widows, cohabitation of a widow with her husband's brother is presumptive proof of a *karáo* marriage ; and the offspring of such cohabitation is legitimate.

No doubt among such tribes marriage is often presumed from the cohabitation of a widow with a stranger.

## PART I.—SECTION IV.

### GUARDIANSHIP AND MINORITY.

*Question 1.*—Is a father at liberty to appoint by testament or otherwise whomsoever he will to be after his decease the guardian of his minor children?

*Answer 1.*—A father can appoint any one he pleases of his own or the mother's family to be after his decease the guardian of his minor children. No written testament is necessary (Rájpút, Khánzáda, Beloch, Meo, Gújar, Ahír).

No clear custom (Sayad, Shekh, Mughal, Pathán, Bráhman, Banya, Dhúsar, Káyath, Ját Musalmán, Malláh, Fakír, Taga, Ját Hindú).

*Note.*—Instances of the appointment of a guardian by the father are very rare ; and still more rare is it for him to appoint any but a near relative of his own.

*Question 2.*—State upon whom the guardianship of the person and Guardians without property of a minor successively devolves if no appointment be made by the father.

Is any distinction made as to the property of the minor where the guardian is a female ?

Does the right of guardianship of a female minor always carry with it the right of disposing of her in marriage ?

*Answer 2.*—If no appointment be made by the father, the guardianship of the person and property of a minor successively devolves on (1) the mother, for the person only, (2) the father's father, (3) the elder brother, if of age, (4) the father's brother, (5) the father's brother's son, (6) the paternal grandfather's brother, (7) the son of (6), and so on, as the inheritance would descend.

The guardian of the person is guardian of the property also, except where the mother is the guardian.

The right of guardianship of a female minor always carries with it the right of disposing of her in marriage, except where the mother is the guardian.

(Rájpút, Khánzáda, Beloch, Shekh, Sayad, Mughal, Pathán, Ahír, Gaurwa, Káyath, Banya, Dhúsar, Taga, Mal-láh, Agrí, Fakír, Ját Musalmán.)

Among Gújars, Játs, Bráhmans, and Meos, the same, except that, in the absence of the father's father and elder brother of full age, the mother manages the property of the minor also, subject to the control of the father's relatives, who can prevent her from injuring it permanently.

*Notes.*—As to the right of disposing of a female minor in marriage, see sections II and III.

Sometimes the mother, generally with the consent of the father's relatives, appoints some relative of her own to be her agent in managing the property of the minor.

*Classes of guardians.*      *Question 3.*—Define the different descriptions of guardians, if any.

*Answer 3.*—There are no different descriptions of guardians known, except guardians of the person and guardians of the property, as above detailed. (All tribes.)

#### POWERS OF GUARDIANS.

*Question 4.*—To what extent, under what conditions, for what purposes, can guardians alienate the property, moveable or immoveable, of their wards by sale, gift, or mortgage?

Alienation.      May a guardian lease the property of his ward? If so, for what period?

*Answer 4.*—A guardian can, in case of necessity, such as for the expenses of a marriage or funeral ceremony, alienate by sale, gift, or mortgage the moveable property of his ward.

A guardian may lease the property of his ward, moveable or immoveable. There is no fixed period beyond which he may not lease it. (All tribes.)

A guardian cannot alienate by sale or gift the immoveable property of his ward. (All tribes.)

A guardian can, in case of urgent necessity, such as to pay the Government revenue, mortgage the immoveable property of his ward (Ahír, Beloch, Shekh, Pathán, Meo, Bráhman, Gújar, Ját Hindú and Musalmán, Banya, Dhúsar, Taga, Mallah, Fakír, Káyath).

A guardian cannot mortgage the immoveable property of his ward (Rájpút, Gaurwa, Khánzáda, Sayad, Mughal).

*Note.*—Probably, in case of dire necessity, if all the male

relatives agreed and it were done solely for the benefit of the ward, the guardian might even sell a portion of the ward's land to save the rest. There are a few instances of this having been done.

*Question 5.*—As regards the moveable property of the minor, state to what extent the contracts of the guardian are Contract. considered binding.

Are they binding whether or no they be beneficial to the minor, or whether or no they be made under manifest necessity?

*Answer 5.*—The contracts of a guardian affecting the moveable property of his ward are binding whether or no they turn out beneficial to the minor, and whether or no they be made under manifest necessity, provided they be made in good faith. (All tribes.)

*Question 6.*—Who is entitled to the custody of a married female infant whose father and husband are alive?  
Custody.

*Answer 6.*—The father is entitled to the custody of a married female infant until the *gauná* has taken place; after that the husband and his family are entitled to her custody. (All tribes.)

*Note.*—After the marriage, the girl returns, after a few days' stay with the bridegroom, to her own father's house; and when both parties have attained puberty, she is carried in a procession, called the *gauná*, *chálá*, *khandáwá*, *bahorá*, or *mukláwá*, to her husband's house, and finally deposited with him. It seems that the husband may demand possession of the girl when she attains puberty.

The betrothal is looked on as a contract to transfer the ownership of the girl to the boy's family. The marriage does transfer the ownership; and the *gauná* transfers the possession. Thereafter the girl's family have no claim on her.

*Question 7.*—If a widow, being the guardian of her minor child remarry, will the widow's right of guardianship Cessation. cease? On her again becoming a widow, will it revive?

*Answer 7.*—If a widow, being the guardian of her minor child, remarry, the widow's right of guardianship ceases; and the father's relatives become the guardians. On her again becoming a widow, the right of guardianship of her former husband's child will not revive. (All tribes which practise the remarriage of widows.)

## POWERS OF MINORS.

*Question 8.*—May a minor acquire property independently of parents or guardians ?  
Acquisition.

*Answer 8.*—A minor cannot, except by gift, acquire property independently of parents or guardians. (All tribes.)

*Question 9.*—To what extent are the contracts of minors, made independently of parents or guardians, binding ?  
Contracts.

*Answer 9.*—Contracts made by minors independently of parents or guardians are not binding. (All tribes.)

*Question 10.*—Is a minor whose father is dead, and who has inherited the father's estate, liable for the father's debts of father. debts ?

If such debts are not payable till the minor come of age, can the property inherited be alienated in the interval ?

*Answer 10.*—A minor who has inherited his father's estate is liable for his father's debts. Such debts are not payable till the minor comes of age ; and the property inherited cannot be alienated in the interval. (All tribes.)

*Note.*—No instance of a son's giving up his ancestral estate on the ground that the assets were exceeded by the debts. Probably, if the creditors agreed, part of the estate might be alienated in the interval for necessities.

*Question 11.*—Are females, whether minors or adults, always under Guardianship of women. guardianship ? Upon whom does the guardianship of (1) an unmarried, (2) a married, female successively devolve ?

*Answer 11.*—An unmarried female (not a widow), whether minor or adult, is always to the fullest extent under the guardianship of her father, or, if he be dead, some relative in the order given in answer 2. A married female is always under the guardianship of her husband while he lives. (All tribes).

A widow, whether minor or adult, is always under the guardianship of her husband's family (Rájpút, Khánzáda, Gaurwa, Banya, Dhúsar, Káyath, Taga, Fakír, Ját Musalmán, Malláh).

A widow is to some extent under the guardianship of her husband's brothers or near relatives in the order of inheritance. She cannot marry again, or betroth her children, or alienate her immoveable property, without consulting them ; but she can arrange about her moveable property, and can do much in her own name for herself and her children, some-

times appointing a relative of her own as agent. (Meo, Ahír, Bráhman, Gúzar, Ját, Beloch, Sayad, Shekh, Pathán, Mughal.)

*Question 12.*—As regards capacity to act in marriage, dower, divorce, Cessation of minority. and adoption, up to what age or event does minority continue in the case of (1) male, (2) female, children?

*Answer 12.*—There is no fixed age or event at which minority terminates, but a boy or girl is generally considered to be of age when the signs of puberty distinctly show themselves. (All tribes.)

*Note.*—They say that a boy becomes of age about 18, and a girl about 15.

*Question 13.*—Who have the preferential claim to the guardianship of illegitimate children—the mother and her relatives, or the father and his relatives?

*Answer 13.*—There are different degrees of illegitimacy.

(1). The child whose father is unknown, or the child of an unmarried girl. This is considered obominable (*harám*). The woman and child are expelled, the child being left to the woman's care and the father having no claim. Such cases are, owing to the universal custom of early marriages, very rare.

(2). The child of a kept concubine among Ahírs, Rájpúts, and other tribes which allow concubinage. This is called *suraitwál* (from *surait*, a concubine); and the father and his relatives have the right to its guardianship, but it does not inherit.

(3). The child of a widow whom the father might marry by *karáo* or *nikáh*. This is generally considered legitimate and inherits; and the father is entitled to its guardianship.

## PART II.—SECTION I.

### GENERAL RULES OF INHERITANCE.

*A.—Where there are male lineal descendants.*

*Question 1.*—If a man die leaving a widow or widows, a son or sons, Succession of sons. a daughter or daughters, brothers, and other relatives, upon whom will the inheritance devolve?

*Answer 1.*—If there be a son or sons, or their male lineal descendants through males, they will inherit on the death of the father.

*Note.*—Where the custom of *máon bat* prevails, if there be a childless widow and sons by another widow, sometimes (but rarely) the childless widow may take a life-interest in the share of her husband's land which would have gone to her son had she any.

Shares of sons.

*Question 2.*—If there be more sons than one, will they take equal shares?

If the sons do not take equal shares, state upon what principle the shares are regulated.

- (1) Is any regard had to uterine descent? Are the shares in the inheritance distributed according to the number of mothers?
- (2) Is any regard had to the caste or tribe of the mother, so that the sons by a wife of a high caste, or of the same caste or tribe with the father, take larger shares than the sons by the wife of a low caste or of a different caste or tribe?
- (3) Is any regard had to the age of the sons, so that (1) the eldest son, (2) the youngest son, would take a greater or less share than his brethren?

*Answer 2.*—Where the sons inherit, and there are more sons than one—

(1) *Age.*—In no tribe is any regard paid to the age of the sons so that the eldest or youngest son should take more or less than his brothers. As far as age is concerned, all share equally.

(2) *Caste.*—In no tribe is any regard had to the caste or tribe of the mother, provided that she was of a tribe with which marriage is permissible. So far as the caste of the mother is concerned, all the sons share equally.

*Note.*—There is some doubt as to whether the son of a Rájpút Musalmán by a woman of another tribe whom he has married by *nikáh* would inherit or not. The Rájpúts say he would not.

(3) *Uterine descent.*—No regard is paid to uterine descent. All the legitimate sons, whether descended from the same or different mothers, take equal shares (Banya, Dhúsar, Taga, Káyath, Agrí, Malláh, Ját Hindú and Musalmán, Fakír, Bráhman, Gújar, Gaurwa, Meo, Khánzáfá, Sayad, Shekh, Mughal, Pathán, Beloch, Ahír, and some families of Rájpúts). But generally among the Rájpúts, among a few families of Ahírs (the same who do not allow the remarriage of widows), and a few villages of Játs, and here and there among the Meos, Khánzáfás, and Beloch, the inheritance is divided among the sons according to the number of mothers, the sons, however few, of one mother taking as much as the sons, however many, of another.

*Note.*—As this custom of *máon bat*, or division according to the number of mothers, is very rare in comparison with the custom of *bháiyon bat*, or division according to the number of sons without regard to the number of mothers ; and as it seems contrary in a sense to equity, and no reasonable ground can be assigned for the anomaly, very clear proof of the custom should be required before it is allowed.

The only case of inheritance in which regard is paid to the age of the son is in the devolution of the office of headman. This goes strictly in the eldest branch ; so much so that if the eldest son of the deceased headman be dead or unfit, it will go to his eldest son, though a minor, in preference to his younger brother. (Indeed the people often wish the childless widow of a headman to enjoy the emoluments and hold the office for her lifetime.)

*Question 3.*—Can a father in his lifetime nominate a particular son as the fit person to take a larger share than his Laik bétá. brethren after the father's decease.

*Answer 3.*—A father cannot in his lifetime nominate a particular son as the fit person to take a larger share than his brothers after the father's decease. (All tribes.)

*Question 4.*—When an estate has been held jointly by a father and his sons, and is distributed amongst them upon his decease, are acquisitions made by the sons exempt from distribution ; or will all the sons share in all the joint estate, moveable or immoveable, ancestral or acquired, whether or no any part of such estate have been acquired by any one or more of the sons, or have devolved upon any one or more of them by right of inheritance in the female line or through a female ?

*Answer 4.*—When an estate has been held jointly by a father and his sons, and is distributed amongst them upon his decease, all the sons share in all the joint estate, moveable or immoveable, ancestral or acquired, without exception (Bráhman, Gújár, Ját Hindú and Musalmán, a few Rájpút gots, Malláh, and generally among Ahír, Beloch, Meo, Taga.) The same, except property acquired by one of the sons only from his mother or wife's relatives, which is exempt from distribution (Sayad, Shekh, Mughal, Pathán, Gaurwa, Dhúsár, Banya, Káyath, Fakír, Khánzáda, generally among Rájpúts, and sometimes among Ahír, Beloch, Meo, Taga.)

*Note.*—It may be taken as an almost universal rule that on partition of a joint family estate everything is brought

into partition; the idea being that all the expenses of equipping a son having been paid from the joint fund, all his acquisitions should go to it, and the family, having jointly borne the expenses of his marriage, should jointly share in any gifts he may thereby receive. It is rather as a matter of favour than of right that one son is sometimes allowed to keep what has been acquired by him in a special manner without directly employing the joint property, or a gift made specially to him or to his wife by persons who intended it for their particular use rather than for the benefit of the joint family.

#### *B.—Right of Representation.*

*Question 1.—Amongst male lineal descendants.*—Where there are male descendants who do not all stand in the same degree of kindred to the deceased, and the persons through whom the more remote are descended from him are dead, will the nearer descendants exclude the more remote; or are the more remote descendants entitled to succeed simultaneously with the nearer descendants?

*Answer 1.*—Where there are male descendants who do not all stand in the same degree of kindred to the deceased, and the persons through whom the more remote are descended from him are dead, the nearer descendants do not exclude the more remote and the more remote are entitled to succeed simultaneously with the nearer descendants. (All tribes.)

*Note.*—Thus, to take the simplest case, the son of a deceased son is not excluded by his uncle.

*Question 2.—Per capita or per stirpes.*—If in the case stated in question 1 the more remote descendants succeed simultaneously with the nearer descendants, how is the estate to be divided?

Is it to be divided in equal shares amongst all the heirs; or is it to be divided into such a number of equal shares as may correspond with the number of the male lineal descendants of the deceased, who either stood in the nearest degree of kindred to him at his decease, or, having been of the like degree of kindred to him, died before him, leaving male descendants who survived him?

*Answer 2.*—In the case above stated the estate is divided into as many equal shares as correspond with the number of sons alive, or who, though dead, have left male lineal descendants. The share of each deceased son so calculated is then similarly divided among his male lineal descendants. (All tribes.)

*Note.*—This is, of course, modified by the custom of *máon bat*. Where the sons are of different mothers, their shares are not necessarily *equal*, but in any case, whatever the

share of the son would have been had he been alive goes to his male lineal descendants who represent him. The division is in the fullest sense *per stirpes*, and not *per capita*.

*Question 3.*—Where there is no son, but where the male lineal descendants are all grandsons, or all great-grandsons, will the estate be divided equally amongst all such grandsons or great-grandsons as the case may be; or will the shares be allotted to the grandsons proportionately to the shares which the sons would have taken had they been living, or to the great-grandsons proportionately to the shares which the grandsons would have taken had they survived the deceased?

*Answer 3.*—Although there be no son surviving, and the surviving male lineal descendants are all grandsons or all great-grandsons, still the shares are not divided equally among the grandsons or great-grandsons as the case may be, but are allotted proportionately to the number of sons whose male lineal descendants survive; and each son's share is similarly allotted among his male lineal descendants. (All tribes.)

*Note.*—In the fullest sense *per stirpes*, and not *per capita*.

*Question 4.—Amongst heirs in general.*—Do the principles stated in the replies to questions 1 and 2 apply to every case of the distribution of an inheritance; or is there any distinction when collaterals inherit; that is to say, does a son or grandson always take the share his father or grandfather would have taken, if such father or grandfather had survived the deceased, whether or no the share descend lineally or through a collateral relative?

*Answer 4.*—The principle of representation as above stated applies to every case of a distribution of an inheritance, whether or no the shares descend lineally or through a collateral relative. (All tribes.)

*Note.*—In the fullest sense *per stirpes*. Thus, when a man dies childless, and his property goes to his collateral relatives, a surviving brother does not exclude a deceased brother's son.

*Question 5.*—Does the inheritance successively devolve upon all male Cessation in direct line descendants how low soever; or is there any line. degree fixed in the descending line within which, if there be no male lineal descendants, the inheritance will devolve on other relatives?

If so, state what the degree is.

*Answer 5.*—The inheritance devolves successively upon all male lineal descendants through males how low soever. There is no limit fixed beyond which it does not go in the descending line. (All tribes.)

*Note.*—In no case can a male lineal descendant through

males—for instance a great-grandson—be passed over in favour of the widow or a collateral. Even among the Hindú tribes in customs regarding succession no attention is paid to whether or not the person inheriting is the person whose duty and right it is to perform the funeral rites, as stated in the Hindú law. That question is hardly ever mixed up by the people with the question of inheritance. In inheritance the general rule is simple. “The succession goes to the nearest agnates or their representatives.” It will be noted, more especially in this section, that neither the Hindú nor the Muhammadan law is followed in questions of succession by the tribes of this district.

*C.—Where there are no male lineal descendants.*

THE WIDOW.

*Question 1.*—If a man die leaving a widow or widows, and either a daughter or daughters, or brother or their descendants, or uncles or their descendants, or great-uncles or their descendants, but no male lineal descendants within three generations, upon whom will the inheritance devolve ?

*Answer 1.*—If there be no male lineal descendants through males, the widow inherits in preference to all others. (All tribes.)

*Note.*—In a few families of Beloch, it seems the widow does not inherit,\* and is entitled to maintenance only, but this is the only exception to the otherwise universal rule.

*Question 2.*—If the estate devolve upon the widow, define her interest therein. What rights has the widow to alienate by sale, gift, mortgage, or bequest?

(1) Are there any special circumstances or expenses under or on account of which alienation is permissible? If so, what are these?

Is there any distinction in respect of moveable or immoveable, ancestral or acquired property; or in respect of alienation of the kindred of the deceased husband?

(2) Supposing alienation to be permissible, whose consent is necessary to make it valid?

*Answer 2.*—If the estate devolve upon the widow, her interest is a life-interest only, but she is owner of the property for the time being.

A widow can alienate as she pleases any of the moveable property which has devolved on her from her husband.

A widow can, with the consent of her husband's rela-

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\* This was vigorously asserted by the Beloches of Jampur. See below, page 258.—C.L.T.

tives, alienate by sale, gift, or mortgage the immoveable property which has devolved on her from her husband.

No distinction is made between ancestral and acquired property.

(All tribes.)

*Note.*—The only matter left doubtful is the widow's power to alienate the immoveable property without the consent of the husband's relatives, who have a reversionary interest in it as next heirs. Only a few of the Khánzádas and one Rájpút asserted that the widow has full power to alienate the immoveable property as she pleases without consulting any one; and this can hardly be accepted. Among almost all the tribes the feeling is very strong that the widow should not, and cannot, alienate the immoveable property without the consent of her husband's relatives. Many instances are brought forward in almost every tribe in which the widow sold or mortgaged the immoveable property which had devolved on her from her husband; and it is at least doubtful whether in all these instances the consent of the husband's relatives was obtained. Still more common is it to find the widow gifting the land, or a part of it, to her daughter's son or husband, and thus preventing it from reverting to the husband's relatives on her death. Of most of these numerous instances it is asserted that the husband's relatives agreed, or that their objection was wrongly dismissed by the court; and it is the almost universal feeling that, except in very special cases, the widow should not be allowed this liberty. I would consider it as the universal custom, both among Hindús and Musalmans (for in no tribe does the Muhammadan law on this matter prevail) that the widow cannot, except in case of urgent necessity, when her husband's relatives cannot, or will not, help her otherwise, or when they agree to the alienation, sell, mortgage, or give away by gift or bequest any of the immoveable property which has devolved on her from her husband.

*Question 3.*—As regards the right of a Muhammadan widow to alienate, is any distinction taken in respect of her legal shares?

*Answer 3.*—As regards the right of a Muhammadan widow to alienate, no distinction is taken in respect of her legal shares. (All Musalmán tribes.)

*Note.*—In no tribe does a Muhammadan widow take the share to which she is entitled by the Muhammadan law.

*Question 4.*—If there be several widows, do they take in equal

**Shares of widows.** shares? Is any distinction made in respect of the right of widows who are not of the same family with their deceased husband?

*Answer 4.*—If there be several widows, they all take in equal shares. No distinction is made with reference to the family of the widow. All with whom marriage is permissible and who have been properly married by *shádí*, *karáo*, or *nikáh* inherit equally a life-interest. (All tribes.)

*Note.*—It seems that among the Musalman Rájpúts none but a Rajpútni widow takes a life-interest. Even though married by *nikáh*, a woman of another tribe seems to be looked on as a concubine (*surait*). One widow is excluded by the son or son's son of another widow, except perhaps where the custom of *maon bat* (division of the inheritance by mothers) prevails.

*Question 5.*—Is there any distinction in the rights of widows based upon the circumstance whether the husband were or were not associated with his brethren?

*Exclusion of widow.* *Answer 5.*—It makes no difference in the rights of a widow whether her husband was associated with his brothers or not. She takes by representation her husband's share. (All tribes.)

*Note.*—Here, as in many other important matters, universal custom differs from what is accepted as the Hindú law.

In all cases of inheritance, the widow of a person who would, if alive, have shared, and who has died without sons or son's sons, takes a life-interest in what would have been her husband's share.

*Unchastity of widows* *Question 6.*—What is the effect of unchastity upon the right of a widow in respect of the estate of her deceased husband?

In the case of widows who are not Hindús, what is the effect of their remarriage?

*Answer 6.*—If a widow be proved unchaste, or marry again, she loses all right with respect to the estate of her deceased husband. (All tribes.)

#### D.—*Rights of daughters and their issue.*

*Succession of daughters.* *Question 1.*—Under what circumstances are daughters entitled to inherit? Are they excluded by the sons, or by the widow, or by the near male kindred, of the deceased? If they are excluded by the near male kindred is there any fixed limit of relationship within which such near kindred must stand

towards the deceased in order to exclude his daughters? If so, how is the limit ascertained? If this depends on descent from a common ancestor, state within how many generations relatively to the deceased such common ancestor must come.

*Answer 1.*—A daughter is in no case entitled to inherit. She is excluded by the widow, or by the sons, or by the male kindred of the deceased, related through males, of any degree (Meo, Khánzáda, Beloch, Pathán, Mughal, Ahír, Bráhman, Gújar, Ját, Gaurwa, Rájpút, Banya, Dhúsar, Taga, Ágrí, Ját Musalman, Káyath, Fakír, Malláh).

Among Sayads and Shekhs daughters are excluded by the widow or by male lineal descendants through males of the father.

*Notes.*—It is doubtful whether among the Shekhs and Sayads also the daughter is not excluded by the male collateral relations through males. But no doubt, among the Sayads especially, this otherwise universal custom has been modified, probably by the influence of Muhammadan law, in favour of the daughter; but nowhere is the Muhammadan law strictly followed.

The general idea is, that the daughter has a right to be suitably married—nothing more. Among Hindú tribes and among some Musalmán tribes, the daughter must marry into another *gót*, to which thereafter she and her children belong; and as one of the strongest feelings is that property must not leave the *gót*, she and her children have no right to inherit her father's property. Their rights to inherit are confined to the property of the husband's family, to whose *gót* they belong. It is by no means uncommon, however, especially where there are no male lineal descendants through males, to find a man succeeded by his daughter, son-in-law, or daughter's son; but this succession does not seem to take place by right of inheritance. Generally the father has in his life-time gone through some form of gift or adoption or sale; and the male relations through males have given their express or tacit consent. Among almost all tribes there is a very strong feeling that, even where such a form has been gone through, the property should not leave the *gót*, unless the nearest agnates, to whom it would go by inheritance, agree to let it go. I would consider this to be the almost universal custom.

*Question 2.*—Is there any distinction as to the rights of daughters to inherit (1) the immoveable or ancestral, (2) the moveable or acquired, property of their father?

*Answer 2.*—As regards the right of the daughter to inherit, no distinction is made between the moveable or immoveable, ancestral or acquired, property of the father. (All tribes.)

*Note.*—Naturally the male relatives are more ready to consent to the daughter's taking the moveable acquired property of the father than his immoveable or ancestral property.

*Question 3.—Maintenance and marriage.*

(1) Under what circumstances are daughters entitled to be maintained out of the estate of their deceased father?

(2) What is the effect of (a) marriage, (b) residence in a strange village, upon the right of the daughter to inherit or to be maintained?

(3) If a married daughter with her husband live with the father up to his decease, can the daughter inherit?

(4) Can daughters who are married and barren, or widowed and without male issue, or mothers of daughters only, inherit the father's estate?

*Answer 3.—*

(1) Unmarried daughters are entitled to be maintained out of the estate of their deceased father until they are suitably married.

(2) The right of the daughter to be maintained is lost by her marriage or residing in a strange village.

(3) It makes no difference in the right of the daughter to inherit, whether she be married or reside in a strange village, or be married and barren, or widowed and without male issue, or mother of daughters only, or whether she and the husband reside with the father up to his decease.

*Note.*—There is hardly an instance in which a girl is not married sooner or later; and it is her right to be suitably married.

As a general rule, in no case is a daughter entitled to inherit; but there is more chance of a daughter's succeeding with the tacit or express consent of the father's relatives if she live with her father and have a son.

*Question 4.—What is the nature of the interest taken by a daughter*

Nature of daughters' interest. in the property she inherits? Define her rights of alienation, if any, by sale, gift, mortgage, or bequest.

*Answer 4.*—When a daughter is allowed to succeed, whether by tacit consent, by gift, or in any other way, her interest is more than a life-interest, and, in fact, seems almost equivalent to that of a male owner, subject, however, to the

control of her husband. The land does not on her death lapse to her father's relatives, but descends to her sons.

**Daughters' issue.**      **Question 5.—**After daughters, do daughters' sons succeed?

If so, is the property equally divided amongst all the sons of several daughters; or are the shares proportioned to the number of daughters who leave sons?

**Answer 5.—**Daughters' sons are not entitled to inherit. (All tribes, except Sayads and Shekhs).

Failing daughters, daughters' sons succeed, taking by representation shares proportioned to the number of daughters who have sons (Sayads and Shekhs).

**Note.**—As with daughters, so with daughters' sons. Although never *entitled* to inherit, they are often permitted to succeed their maternal grandfather by gift or by simple consent of the heirs. The custom of allowing land to go to a daughter's son in default of a son is increasing. Here, too, the custom of representation generally prevails, but not universally, as the succession is rather by consent than of right.

#### E.—Other Relatives.

##### I. PARENTS.

**Question 1.—**When a man dies leaving no male lineal descendants, Mother and father.      no widow, and no daughters or daughters' sons, upon whom will the inheritance successively devolve?

**Answer 1.—**Failing male lineal descendants through males and widows, in all tribes except Sayads and Shekhs, the inheritance devolves successively on the following relatives:—

(a) Where the custom of *bhaiyon bat* prevails (see Inheritance, answer 2)—

- (1) the father; (2) the brothers and their male lineal descendants through males, and their widows, if sonless;
- (3) the mother; (4) the father's father;
- (5) the paternal uncles and their male lineal descendants through males;
- (6) the father's mother; (7) the father's paternal uncles and their male lineal descendants through males, &c., &c.,—to the male agnates only.

(b) Where the custom of *máon bat* prevails (see Inheritance, answer 2)—

- (1) the father; (2) the full-brothers and their male lineal descendants through males, and their widows, if sonless;
- (3) the mother; (4) the step-brothers and their male lineal descendants through males, and their widows, if sonless;
- (5) the step-mother; (6) the father's father; (7) the paternal uncles and their male lineal descendants through males, &c., &c., in the same way—to male agnates only.

Among the Sayads and Shekhs there is no clear custom, save that the brothers and their male lineal descendants take, and, failing them, probably the sisters and their descendants (but this is doubtful).

*Note.*—It will be observed that the order of succession is quite consistent throughout, only the male agnates taking in full possession, the widow of any one who would, if alive, have had a share, taking that share for life, before it goes to a higher generation, and the person of a higher generation taking it before it goes through him to persons of the same or a lower generation. It should be particularly noticed that, in all cases, the sonless widow of a person who would, if alive, have shared, takes a life-interest in what her husband's share would have been. Thus, a grandson's widow would take a life-interest in an equal share with the other grandsons by the same son, and, if there were no other lineal descendant, would take a life-interest in the whole property before it went to the brothers.

*Question 2.*—When the estate devolves upon the mother of the deceased, what is the nature of the interest she acquires? Define her powers of alienation. On the death of the mother, will the property devolve on the heirs of the son or on her heirs?

*Answer 2.*—When the estate devolves on the mother of the deceased, she takes only a life-interest, and has the same powers that the widow has.

After the mother's death, the estate devolves on the heirs of the son, not on her heirs.

(All tribes.)

## II.—BROTHERS AND THEIR ISSUE.

**Question 1.**—When the property devolves on brethren, what, if any, Effects of association. regard is paid (1) to uterine descent, (2) to association? Do uterine associated brethren exclude all others?

In what order succeed—

- (i) unassociated brethren of the whole blood;
- (ii) associated brethren of the half-blood;
- (iii) unassociated brethren of the half-blood;

If a man die leaving a uterine brother separated and a half-brother associated, how will these two inherit?

**Answer 1.**—In the distribution of the immoveable property, no regard is paid to the fact of association or non-association. (All tribes.)

Where the custom of *máon bat* prevails, the full-brothers exclude the half-brothers from succession to the immoveable property. Where the custom of *bhaiyon bat* prevails, full-brothers and half-brothers share alike in the immoveable property. (Probably all tribes.)

**Question 2.**—When a man dies leaving associated brethren or unassociated brethren, and the property devolves on his brethren, have the associated brethren any preferential claim to acquired property, moveable or immoveable, or to ancestral moveable property?

**Answer 2.**—When the property devolves on the brothers, no distinction is made between ancestral and acquired property; but the associated brothers, whether of the same mother or not, take all the moveable property. (Probably all tribes.)

**Note.**—There is some doubt whether among the Bráhmans, Gaurwas, Sayads, Shekhs, Patháns, and Mughals, the associated brother would exclude the unassociated from a share in the moveable property. His sharing or not sharing seems partly to depend on whether or not he paid a part of the expenses of the funeral feast (*káj*). No doubt the court would take into consideration the circumstances of the previous partition, and would consider acquired immoveable property as similar to moveable property.

**Question 3.**—In default of brethren, does the property devolve upon Brother's issue. their sons?

**Answer 3.**—In default of brothers, the property devolves on their sons or male lineal descendants through males, the sons of a deceased brother taking by representation along with the surviving brothers. (All tribes.)

### III.—SISTERS AND THEIR ISSUE.

*Question 1.*—Does the property ever devolve upon sisters, or upon sisters' sons? If upon sisters' sons, how are their shares computed?

*Answer 1.*—Sisters and their sons are in no case entitled to inherit. (All tribes.)

*Note.*—Perhaps, following the analogy of the daughter's case, among the Shekhs and Sayads, the sister or sister's son might have a right to inherit in the absence of male descendants through males of the same grandfather; but in no case is the Muhammadan law of sharer and residuary as regards the sister acted on.

See note on "daughter." Generally speaking, neither has any right to inherit; but the consent of the heirs (agnates) to the succession of the daughter or daughter's son is more likely than in that of the sister or sister's son.

### IV.—THE HUSBAND.

*Question 1.*—Where a wife dies holding property in her own right, is the husband entitled to such property, or any part of it?

*Answer 1.*—When a wife dies holding property in her own right, the husband succeeds in default of sons or sons' sons (Meo, Beloch, Mughal, Pathán, Bráhman, Gújar, Ját, Banya, Dhúsar, Káyath, Malláh, Ját Musalmán, Taga, Fakír).

The husband succeeds in default of issue, whether male or female (Shekhs and Sayads).

The husband succeeds (Ahír, Khánzáda, Rájpút, and Gaurwa).

*Note.*—The husband takes either all or none at all. He never takes a share only as prescribed in the Muhammadan law.

### V.—THE STEPSON.

*Question 1.*—Can the son by a former marriage of a woman who contracts a second marriage inherit from (1) his natural father, (2) his stepfather? If from his stepfather, is his share equal to, or less than, that of his stepfather's own sons?

*Answer 1.*—The son by a former marriage of a woman who contracts a second marriage is entitled to inherit from his natural father. He has no right to inherit from his stepfather. (All tribes having any custom on the point.)

*Question 2.*—Is any distinction taken as regards the stepson, (i) if he be not born till after the second marriage of his mother; (ii) if the step-father in his lifetime assign him a share by deed?

*Answer 2.*—No distinction is made in the stepson's right to inherit whether or not he be born before the second marriage of his mother, and whether or not the stepfather assign to him in his lifetime a share by deed. (All tribes having any custom on the point.)

*Question 3.*—Are stepsons entitled to be maintained by their step-father? If so, till what age?

*Answer 3.*—Stepsons are entitled to be maintained by their stepfather until able to maintain themselves. (All tribes.)

*Note.*—Although the stepson, not being an agnate of his stepfather, has no *right* to inherit his property, there are instances in which, by consent of the agnatic heirs in deference to the wishes of the stepfather, the stepson has been allowed to take a share generally less than, but sometimes equal to, the share he would have taken had he been a natural son. I consider that the agnatic heirs have the right to forbid this as regards the immoveable property; but the stepson has a better chance of being allowed to keep a share if the stepfather has by gift during his lifetime put him in possession. Generally the stepson is expelled by the sons after the stepfather's death.

#### F.—Where there are no Relatives.

*Question 1.*—Enumerate in the order of their succession the persons entitled to the estate of a man who dies intestate  
Order of succession. leaving no relations.

*Answer 1.*—No instance known of a man's having died leaving no relatives. (All tribes.)

*Note.*—The members of village communities are always so closely interrelated, and are so particular about their pedigrees, that it is hardly conceivable that a man should not be able to trace his relatives. The general rule is that the heirs are the nearest male agnates, however remote. These must necessarily be of the same *göt* with the deceased. In a case, however, in which a man had received land from his father-in-law or maternal grandfather in a village different from his own, it would be more in accordance with the ideas of the people that the land should revert to the original *göt* and go

to the village than that it should go to a distant relative of the last possessor in another village. Such cases, however, are rare, and there is no custom.

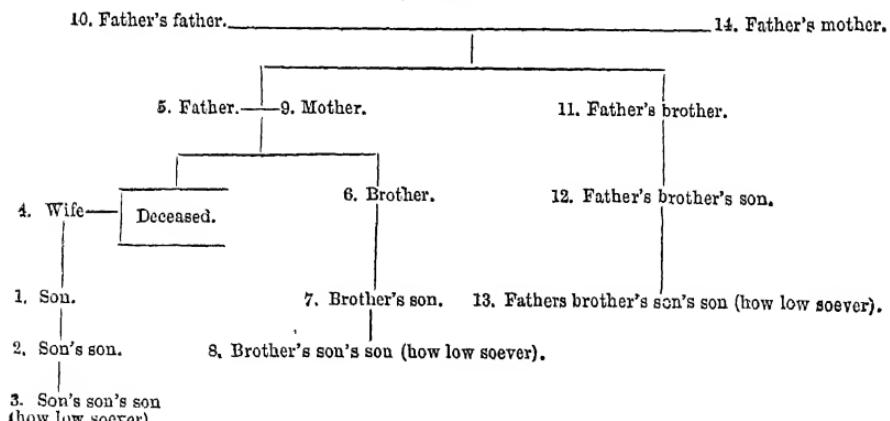
#### *G.—Ascetics.*

*Question 1.*—If a person voluntarily retires from the world and becomes a member of a religious order, what is the effect upon (i) his right to retain his property, (ii) his right to property acquired by inheritance? Upon whom will devolve property which he would have inherited if he had not retired from the world?

*Answer 1.*—If a person voluntarily retires from the world and becomes a member of a religious order, the effect upon the rights to retain, and acquire by inheritance, property is exactly as if he had died. He cannot retain his property, which goes to his heirs as if he had died. He cannot acquire property by inheritance. It will go to the person to whom it would have gone if he had died. (All tribes, whether Hindú or Musalmán, whose members become ascetics.)

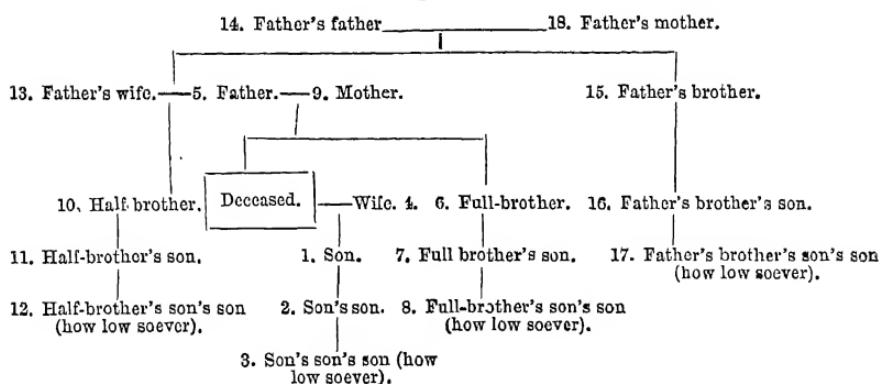
*Note.*—When a man becomes a religious ascetic, he becomes civilly dead. Indeed, sometimes his wife is treated like a widow, and marries again. Some say that if an ascetic before breaking his caste returns to the world, he can take again his civil rights as if he had never gone.

*Chart showing the general order of inheritance where the custom of bháiyon bat prevails.*



*Note.*—This holds for both Hindús and Musalmáns, except perhaps Shekhs and Sayads. Where there are two of one class, they share equally, and the right of representation prevails to the fullest extent. No heir excludes the agnatic descendant or the widow of another heir of the same class.

*Chart showing the general order of inheritance where the custom of máon bat prevails.*



See note above. A woman succeeds only when she is a widow and there is no agnatic descendant or widow of an agnatic descendant of her husband. She takes a life-interest only, and excludes for her lifetime the collateral or ascending agnatic heirs of her husband.

No regard is paid to the fact of who offers oblations to whom, and who performs whose funeral obsequies. All that is thought of is agnatic relationship.

## PART II.—SECTION II.

### ADOPTION.

#### A.—Who may adopt.

*Question 1.*—Is it necessary that the adopter should be destitute of a son, a son's son, and a son's grandson? Is a daughter's son a bar to the right of adoption?

*Answer 1.*—If a man have a son, or a son's son, or a son's son's son, he cannot adopt.

A daughter's son is no bar to the right of adoption. (All tribes which have the custom of adoption.)

*Note.*—The following tribes do not seem to have the custom of adoption:—Beloch, Sayad, Shekh, Mughal, Pathán, Musalmán Gaurwa, Fakír.

*Question 2.*—May a man adopt who has male issue, if such issue be disqualified by any legal impediment (such as loss of caste) from performing the exequial rites?

*Answer 2.*—A man who has male issue may adopt if such issue be outcaste or a leper, an idiot, an ascetic, or not heard of for a long time. (Seemingly all castes which adopt.)

*Note.*—Little regard is paid to whether or no the son is capable of performing exequial rites. They think more of his ability to work and support his father or mother.

*Question 3.*—Can a man who had already adopted a son adopt another during the lifetime of the first?

*Answer 3.*—A man who has already adopted a son cannot adopt another during the lifetime of the first. (All tribes which adopt.)

*Question 4.*—Can the following persons adopt:—

- (1) a bachelor;
- (2) a man blind, impotent or lame;
- (3) a widower;
- (4) an ascetic who has renounced the world?

*Answer 4.*—(1) A bachelor, (2) a man blind, impotent or lame, (3) a widower, can adopt. An ascetic who has renounced the world cannot adopt. (All tribes which adopt.)

*Note.*—The Bráhmans say a man impotent from his birth, who could never hope for offspring, cannot adopt; but this is not certain. An ascetic can adopt a pupil (*chela*), who stands to him something like a son. Perhaps an ascetic's wife can adopt a son for him as if he were dead.

*Question 5.*—Can a woman adopt? State whether it is necessary to Adoption by females. the validity of an adoption by a widow that she should adopt with the permission, written or verbal, of her deceased husband, or with the consent of his kindred.

*Answer 5.*—A woman cannot adopt in her husband's lifetime.

A widow can, without the permission, written or verbal, of her deceased husband, adopt any one she pleases of her husband's male relatives related through males.

She cannot adopt any one else without the consent of her husband's male relatives related through males.

(All tribes which adopt, except that the Káyaths, Ját Musalmán, and Malláh say the widow must either have her husband's express permission to adopt, or the consent of her husband's male relatives.)

The Dhúsars say the husband's relatives are either bound to supply the widow with a son, or to allow her to adopt a daughter's son or other relative through a female.

*Question 6.*—In the event of the death of a son adopted by a widow with the sanction of her husband, may the widow adopt another person without permission of her husband to that effect?

*Answer 6.*—A widow can, without permission of her husband, adopt a second son if the son first adopted have died unmarried or have left no son, son's son, or widow. (All tribes which adopt, so far as any custom can be discovered.)

*Note.*—The son's son or widow would be entitled to succeed, and would bar the second adoption; or the son's widow could adopt.

*B.—Who may be adopted.*

*Question 1.*—May a man give in adoption—

Who may be given.	(1) his only son ;
	(2) his eldest son ;
	(3) his brother ?

*Answer 1.*—A man may give in adoption (1) his only son, (2) his eldest son, (3) or his brother (Ahír, perhaps Khánzáda).

*Note.*—But his only son he can give only to his brother or brother's widow, or some near relative; and in that case the son generally succeeds to the property of both (Ahír).

A man may give in adoption his eldest son, or his brother, but not his only son (Meo, Bráhman, Gújar, Ját, Gaurwa, Banya).

A man may give in adoption his brother, but not his only son or his eldest son (Rájpút, Taga, Dhúsar, Káyath, Malláh).

*Question 2.*—Must the person adopted be of less than any specific

age? If so, up to what age may a person be  
Age. adopted? Can a person be adopted after tonsure  
or investiture with the sacred cord in his own family?

*Answer 2.*—There is no limit of age beyond which a person cannot be adopted. The ceremony of tonsure or investiture with the sacred cord, or even marriage and the birth of a son, is no bar to adoption, *i.e.*, a man may be adopted even after he has married and had children. (Seemingly all tribes which adopt.)

*Note.*—Generally among Bráhmans investiture with the sacred thread (*janeú*) takes place at the same time as marriage—about the age of 8 to 12. A man may be adopted after this.

*Question 3.*—Is there any rule by which it is required that the person adopted should be related to the person adopting?  
Relationship. If so, what relatives may be adopted? Is any preference required to be shown to particular relatives? If so, enumer-

ate them in order of preference. Is it necessary that the adopted son and his adoptive father should be (1) of the same caste or tribe, (2) of the same *göt*?

*Answer 3.*—The person adopted should be of the same family with the adopter or the adopting widow's husband. A preference is shown to the husband's elder brother's son or descendants, then to his younger brother's son or descendants; failing them, to the more distant male relatives related through males. The adopted person should be of a lower generation than the person adopting (whether one or two generations lower). The person adopted must be of the same caste with the adopter, and (except in the case of adoption of a daughter or sister's son) of the same *göt* with the adopter or the adopting widow's husband. (Rájput, Banya, Dhúsar, Káyath, Taga, Musalmán, Ját, Agri.)

The same, except that the descendants of the husband's elder brother have no prior claim, as compared with those of the husband's younger brother. The adopter may choose from either. (Ahír, Meo, Bráhman, Gújar, Ját, Gaurwa.)

*Note.*—When a widow adopts, she is supposed to be adopting a son to her husband, and it is the relationship to him that is thought of. The adopted person is called the son of the widow's husband, and succeeds to his property. It is most usual to adopt the husband's brother's son.

*Question 4.*—Is there any rule prohibiting the adoption of the son of a woman whom the adopter could not have married, such as his sister's son or his daughter's son.

*Answer 4.*—There is no rule prohibiting the adoption of the son of a woman whom the adopter could not have married.

A man may, with the consent of his male kindred related through males, adopt his sister's son or daughter's son. A widow may, with the consent of her husband's agnates, adopt for her husband his sister's son or daughter's son. (All tribes which adopt.)

*Note.*—The disqualification is not looked at in the way put in the question. The reason for objecting to the adoption of a sister or daughter's son is that he is related through a female, and is of another *göt*; he is not one of the agnates.

There is a very strong feeling against allowing land to pass into another *göt*; and it is only when the husband's near agnates give their consent, or when there are none, that a sister's son or daughter's son may be adopted. Many assert that in no case can such an adoption take place; but in most tribes there are instances to the contrary.

*C.—With what formalities.*

*Question 1.*—Are any formalities necessary to constitute a valid adoption? If so, describe them. State expressly whether the omission of any customary ceremonies will vitiate the adoption.

*Answer 1.*—The only important ceremony common to all is the handing over of the adopted son by his father or guardian to the adopter before the assembled kindred, with some words implying that henceforth the adopter and adopted are to consider each other as father (or mother) and son. The kindred are generally feasted; and rejoicings are made as when a son is born. If the son is a small child, he is placed in the lap (*god*) of the adopter. (Hence *god lená* = to adopt = to take into the lap.) (All tribes which adopt.)

*Note.*—No doubt, even in the absence of proof of any ceremony, adoption would be presumed from a long-continued relation between the parties implying adoption.

*Question 2.*—Do you distinguish between the *dattaka* and *kritrima* forms of adoption? If so, what is the difference between them, and what are the formalities appropriate to each?

*Answer 2.*—The distinction between the *dattaka* and *kritrima* forms of adoption is not known. The usual form seems to be similar to the *kritrima* form of the Hindú law. The only traces of the *krīta* form are among the Banyas, where, if the adopter cannot get a son among the male relatives, he can buy a son of his own *gōt*, announcing the fact to his relatives. An instance of this is also found among the Meos. Among the Ahírs are traces of the *dwyámusháyana* form.

*D.—The effects of adoption.*

*Question 1.*—Does an adopted son retain his right to inherit from his inheritance from natural father? Can he inherit from his natural father if the natural father die without other sons.

*Answer 1.*—An adopted son loses his right to inherit as son from his natural father. If the natural father dies without other sons, the adopted son can only inherit as the son of his adoptive father. (Rájpút, Khánzáda, Meo, Bráhman, Gújar, Ját, Gaurwa, Dhúsar, Banya, Káyath.)

Among the Ahírs, and perhaps Tagas, if the natural father die without other sons, the adopted son can inherit from his natural father.

*Note.*—But probably only where there are no near relatives to dispute his right.

*Question 2.*—Describe the rights of an adopted son to inherit from inheritance from ad- his adoptive father? What is the effect of the optive father. subsequent birth of natural legitimate sons to the adoptive father? Will the adopted sons take equal shares with them? If natural legitimate sons be born subsequently to the adoption where the *chúndavand* system of inheritance prevails, how will the share of the adopted son, if any, be computed? Can an adopted son whose tribe differs from that of the adopted father inherit from him?

*Answer 2.*—An adopted son cannot be of a different tribe from that of the adoptive father. He inherits from his adoptive father exactly as if he were a natural son, and shares as a son with natural legitimate sons subsequently born to the adoptive father, taking an equal share with them where the *bháiyon bat* system of inheritance prevails, and where the custom of inheritance is *máon bat*, taking as the son of the wife in whose lap he is placed, that is, (where there are two,) the elder wife. (All tribes which adopt.)

*Note.*—Another effect of adoption is that the adopted son, if of a different *gót* (as when he is a sister or daughter's son), assumes the *gót* of the adoptive father, with its prohibited degrees of marriage, but probably the old prohibited degrees remain in force for him.

#### E.—*Ghar Janwáí.*

*Question.*—When a son-in-law leaving his own family takes up his residence permanently with his father-in-law as *gharjanwáí*, what will be the effect on the rights of such son-in-law to inherit (1) from his father, (2) from his father-in-law?

*Answer.*—A son-in-law by living with his father-in-law neither loses any right to inherit from his own father, nor gains any right to inherit from his father-in-law. (All tribes which adopt.)

*Note.*—Although the son-in-law is in no case entitled to inherit (being of another *gót*), he is sometimes allowed to take by consent of the agnates; and this consent is more likely if the son-in-law live with the father-in-law and there be no other near relative.

#### PART II.—SECTION III.

##### SPECIAL PROPERTY OF FEMALES.

There is nowhere any clear custom by which certain property is considered as the special and peculiar property of a

woman, subject in a peculiar way to her absolute control and following special rules of inheritance. Among the Rájpúts, Tagas, Fakírs, and Káyaths, whatever property a wife may receive, even from her father, becomes the absolute property of her husband. Among the Bráhmans, Gújars, Játs, and Gaurwas some little difference is made with regard to ornaments, &c., given to a wife by her father and his family. The husband has full control over his wife's as over his own property. There is no special rule of succession with regard to such property. The sons or husband succeed.

Among the Banyas and Dhúsars, and perhaps to some extent among the other tribes, gifts made to a wife by her father or his relatives, or property acquired by herself, are considered more or less at the disposal of the wife; and her husband does not make use of it, except in case of necessity, or with his wife's consent. She can dispose of it as she pleases, so long as the disposal is not improper.

When land, by gift from the father or consent of the agnates, devolves on the daughter, it goes on her death to her sons or husband, and, failing them, probably to her father's agnates. But if she leaves a daughter only, the agnates are the more likely to consent to its going to a woman that it has gone to a woman before.

#### PART II.—SECTION IV.

##### BASTARDY.

*Question 1.*—Where a marriage has taken place between parties where marriage has whose marriage, either by reason of relationship taken place. or previous marriage, or difference of caste, or any other ground, was not permissible, will the offspring of such marriage be considered legitimate or illegitimate?

*Answer 1.*—Where a marriage has taken place between parties whose marriage by reason of difference of caste was not permissible, the marriage is void, and the offspring illegitimate.

Where it is discovered after marriage that the parties were too closely related through the *gots* of their ancestors, the marriage still holds good, and the offspring are legitimate.

(All tribes having any instances.)

Previous marriage of the woman with another man still alive does not necessarily make the offspring illegitimate (Játs).

*Notes.*—When a man of a Hindú tribe or a Musalmanized Hindú takes into his house a woman of a low caste, such as a Chamár or Bhangí, or is deceived into marrying such a woman by her being put forward as a woman of his own caste, he is, on the fact being discovered, made to turn her out, and her children do not inherit.

Usually so much care is taken in comparing the *gôts* of the parties, that a mistake can hardly be made; but some of the tribes are not very particular about the distant *gots*. Probably a marriage by *nikâh* of persons related within the degree prohibited by the Muhammadan law would be void, and the children illegitimate.

The Jâts say that if a married woman ran away and lived with another Ját and bore him children, they would be his legitimate children, even although the woman was found and taken away by her former husband.

*Question 2.*—Where a lawful marriage has taken place, and a child is born so soon after marriage that the presumption is that it must have been conceived before marriage, is such child considered legitimate; or is any period laid down before which the child would be considered illegitimate and after which legitimate?

*Answer 2.*—There is no distinct custom as to the period which must have elapsed after marriage to raise the presumption of a child's legitimacy.

*Note.*—Most of them say six months must have elapsed, the idea evidently being that the child must be begotten in wedlock; and surely to decide this question, science would be believed rather than the vague ideas of ignorant peasants.

Among tribes which allow *karáo*, very often the *karáo* does not take place until the woman is pregnant; and if her deceased husband's brother at any time admit the child to be his, this is enough to establish its legitimacy. If the *karáo* takes place with a stranger, a sufficient time must have elapsed to afford the presumption that the child was begotten in wedlock.

*Question 3.*—Where a lawful marriage has taken place, and a child is born after the death of the husband or after divorce, is any period laid down up to which the child is considered legitimate and after which illegitimate?

*Answer 3.*—There is no distinct custom as to the period within which a child must be born after the death of the husband or after divorce to be presumed legitimate.

*Note.*—Here, too, surely science would be called in to decide whether the child could have been begotten in wed-

lock. Some give an instance of a woman's remaining pregnant for four years.

*Question 4.*—State generally what are the rights of illegitimate Inheritance of bastards. children to inherit the property of their natural father, noticing the following points:

(i) Will the sons of a slave-girl (*kanizak*) inherit? If so, will they take equal shares with the legitimate son? If they take less shares specify the shares.

(ii) Have the sons of a slave-girl or illegitimate son any better title to succeed where there are no legitimate sons?

(iii) Do you distinguish, for purposes of inheritance, between the sons of a purchased concubine and the sons of a serving woman who was not purchased?

(iv) Do you distinguish, for purposes of inheritance, between illegitimate sons by a woman with whom marriage was lawful and illegitimate sons by a woman with whom marriage was unlawful?

*Answer 4.*—Illegitimate children have in no case any right to inherit. (All tribes.)

*Note.*—Slave-girls (*kanizak* or *laundi*) are kept in the houses of some Rájpúts, Ahírs, and Sayads. Among Hindús their sons never inherit. Among Musalmáns, if the mother have been married by *nikáh*, the children are legitimate, and inherit; but the Rájpút Musalmáns say that, even in such a case, the children are only *suraitwál* or *ghulám*, and do not inherit. Although not forbidden, they are not considered fully legitimate. Rare instances may be found in which, in the absence of any near agnates to object, an illegitimate son succeeded. The Sayads say that the sons of a concubine owned by the father are legitimate, even without *nikáh*, and share; but this is doubtful.

*Question 5.*—Are illegitimate children, who do not inherit, entitled to maintenance as against the heirs of their deceased father?

*Answer 5.*—Illegitimate children by a recognised concubine (*suraitwál*) are entitled to maintenance as against the heirs of their deceased father (Rájpúts, Ahírs).

Other illegitimate children are not entitled to maintenance as against the heirs of their deceased father. (All tribes having any custom).

*Note.*—Among Rájpúts sometimes a *suraitwál* is given enough land to live by. But he cannot alienate it. His right is *milkiyat mahdiúda*—strictly limited.

The usual answer to this question is *kamáo kháo*, i.e., if the illegitimate son work for his living, he gets it; otherwise he is turned out.

*Question 6.—Are sons the offspring of a marriage by the karewas Sons by karewa marriage form entitled to inherit equally with sons the offspring of a regular marriage?*

*Answer 6.—Sons the offspring of a karáo marriage are entitled to inherit equally with sons the offspring of a regular marriage (*shádi*). (All tribes allowing karáo).*

## PART II.—SECTION V.

### WILLS AND LEGACIES.

There is no general custom by which a proprietor makes a disposition of his property to take effect after his death. (All tribes.)

*Note.—A few instances may be found, especially of late years, and chiefly among the Sayads, Ahírs, Meos and Játs, in which an attempt has been made, by word of mouth or in writing, to regulate the disposition of the property after death; but it is doubtful to what extent these dispositions would hold if disputed, and they are certainly contrary to general custom. Sometimes, especially perhaps among the Dhúsars and Banyas, a proprietor does on his death-bed give some directions about his property; but it is difficult to say whether these are of the nature of legacies or deathbed gifts, and to what extent the heirs are considered bound by them. It seems clear that the proprietor cannot, without the consent of his near heirs, deprive them of an unreasonably large portion of the immoveable property, or perhaps of the ancestral moveable property, by any such disposition.*

## PART II.—SECTION VI.

### GIFTS.

#### A.—*Gifts described.*

*Question.—State the facts necessary to constitute a valid gift. Can a gift be conditional or implied?*

Is delivery of possession essential? Must the gift be made in writing?

*Answer.—A gift need not be made in writing. Probably, to constitute a valid gift, delivery of possession is essential, and the gift must not be conditional or implied; but these distinctions are too refined to be brought clearly out by custom. The Dhúsars and Banyas say that delivery of*

possession is not necessary, nor need the gift be unconditional. Even without these, if there be no fraud, a gift is valid. (All tribes).

*Note.*—Generally a gift is neither conditional nor implied, and is made by delivery of possession. In the case of land, mutation of names in the register is considered almost equivalent to delivery of possession. A gift of land, unless it be a few bighas given in charity or for religious purposes, is now-a-days generally accompanied by a deed in writing.

Among Hindús a gift is made as follows by the ceremony called *sankalp*, which is used in giving land for religious purposes, or a feast, or other offering to Bráhmans, or in giving away a daughter in marriage. Before the assembled Bráhmans and brotherhood the giver takes a copper coin (*paisá*) and a little barley (*jau*) in his hand, and a Bráhman pours some water over them. Then the giver places these in the hands of a Bráhman, saying, “I have given two bighas of land” (or “101 oxen,” or “the food of so many Brahmans”) “as an offering to Krishna,” or as the case may be.

#### B.—*Death-bed Gifts.*

*Question 1.*—Are there any special rules relating to death-bed gifts? Can a man who is suffering from a death disease make a gift to his relations, male or female, or in charity? If so, can such gift affect the whole or a part only of his property? If a part only, how much? If some heirs consent and some dissent, is the gift good? If so, to what extent?

*Answer 1.*—There are no special rules relating to death-bed gifts. (All tribes).

There are no instances or customs showing that death-bed gifts are considered different from gifts in other circumstances.

#### C.—*Gifts to Relatives.*

*Question 1.*—Can a father make a gift to his daughter by way of Dowry. dowry (*dahez*) out of his property, moveable or immovable, ancestral or acquired, whether or no there be (1) sons, or (2) near kindred; and whether or no the sons or near kindred, as the case may be, consent?

*Answer 1.*—A father cannot, without the consent of the sons and near male kindred related through males, make a gift out of his immovable property, ancestral or acquired, by way of dowry (*dahez*) to his daughter; but he can, without the consent of his sons or near kindred, make such a

gift out of his moveable property, ancestral or acquired. (All tribes).

*Question 2.*—If the custom of making dowries to daughters obtains, state upon whom the right of inheritance to the property subject to a gift of this nature successively devolves?

*Answer 2.*—There is no special rule of inheritance for property of this nature. The husband and his heirs succeed to it. (All tribes).

*Question 3.*—Define also the power of the daughter or of her husband over such property as regards (1) control, (2) alienation.

*Answer 3.*—The husband, or rather the husband's father, has full control over the dowry, which becomes at once his property. (All tribes).

Among the Ahirs and Meos, and perhaps among other tribes, sometimes regard is paid to the daughter's wishes in the disposal of such property; but the husband's father or the husband has full control.

*Question 4.*—Can a father make a gift of the whole or any specific share of his property, moveable or immoveable, ancestral or acquired, to his daughter otherwise than as her dowry; to his daughter's son; to his sister or her sons; or to his son-in-law? Is his power in this respect altered if he have (1) sons, (2) near kindred and no sons? If the consent of the near kindred is essential to such gifts, state the degree of kindred towards them in which the persons must stand by whom such gifts can be prohibited.

*Answer 4.*—A father cannot, without the consent of his sons or near kindred (males related through males) make a gift of any part of his immoveable property, ancestral or acquired, to his daughter, daughter's son, or any other relative related through a female. He can, without restriction, and without the consent of the sons or near kindred, make a gift to any of those relatives out of his moveable property ancestral or acquired. (All tribes having any clear custom).

*Note.*—There is great confusion between gifts and inheritance and (to some extent) sale. The fact seems to be that, according to strict old custom, the father has no power to alienate the immoveable property from the male to the female line, *i.e.*, out of the *göt*. But natural affection, especially where there were no sons, sought ways in which to avoid this strict rule. Sometimes, with the consent of the male relatives, the daughter or daughter's son took the inheritance after the death of the father, or he in his lifetime went

through the form of a gift, which did not fully take effect till after his death (this resembles a will) ; or a sale was nominally effected in favour of the son-in-law, or the daughter's son was adopted. Hence it is difficult to make out whether the instances are those of sale, gift, inheritance, wills, or adoption ; but it seems clear that they should not take effect against the will of the agnates.

There is a tendency, shown in some tribes more particularly, to allow the father a greater power of gift. Thus, the Banyas say that, if a sonless father's share be separate or acquired by himself, he can give out of that without consent of his brothers.

*Question 5.*—Will the power of the father to make the gifts described in question 4 be affected by the custom of *Ghar Janwai*. *ghar janwai*; that is, if his son-in-law and daughter live with him ? If so, explain in what way ? Can any relative prohibit a gift of property of any description to a son-in-law resident with his father-in-law, to a married daughter resident with her father, or to the children of such persons ? Will the rights of the son-in-law as against the estate of his natural father affect his capacity to receive a gift from his father-in-law ? If the son-in-law be put in possession of such a gift, and his wife die, will he forfeit the gift on remarriage ?

*Answer 5.*—The power of the father to make such a gift is not affected by his having his son-in-law and daughter living with him.

The rights of the son-in-law as against the estate of his natural father do not affect his capacity to receive a gift from his father-in-law.

If the son-in-law be put in possession of such a gift, and his wife die, he will not forfeit the gift on remarriage. As regards the power of the father to make a gift to a son-in-law resident with him, to a married daughter resident with him, or to the children of such persons, see last answer.

(All tribes.)

*Note.*—A relative is less likely to object to a gift on immoveable property to a son-in-law if he be resident with the father-in-law, but the mere fact of residence does not affect his right.

*Question 6.*—Is entire relinquishment by the donor essential to the completion of a gift of property of any description Relinquishment. (1) by a wife to a husband, (2) by a father to his minor child ?

*Answer 6.*—There is no clear custom as to whether entire relinquishment by the donor is essential to the completion

of a gift of property of any description (1) by a wife to a husband, (2) by a father to his minor child. (All tribes.)

*Note.*—The question could hardly ever arise. A wife has no property which is not already in her husband's control; and the property of a minor child would not be considered as his, apart from the father.

#### *D.—Gifts to Strangers.*

*Question 1.*—Give the rules regarding the power of a proprietor to make gifts of his property, moveable or immoveable, ancestral or acquired, to persons who are not related to him, or in charity. Is the consent of the sons, if such there be, or of the near relatives, necessary? If of the near relatives, who are considered such? How does (1) the absence of sons, (2) the circumstance that the property is divided, affect the power of the proprietor to make such gifts?

*Answer 1.*—A proprietor can, without the consent of his sons or near relatives, make a gift to persons who are not related to him, or in charity, of any part of his *moveable* property, ancestral or acquired, whether or no there be sons alive, and whether the property be divided or not.

A proprietor cannot, without the consent of his sons or near male kindred related through males, make a gift of any part of his *immoveable* property, ancestral or acquired, whether it be divided or not.

(All tribes having any clear custom, and probably all others.)

*Note.*—There is no clear custom as to the near male kindred who are entitled to prohibit a gift of immoveable property. Generally only a bigha or two of land is given for some religious purpose to a stranger; and no one thinks of objecting. Probably the sons or near male kindred could prohibit an unreasonably large gift of the moveable property to a stranger.

A *dholi* is a gift of land for religious purposes, and cannot be revoked; but, sometimes, the person to whom it is given may be changed, if he does not perform properly the religious service for which it was given.

A *bhonda* is not a gift properly so called. A Brahman or other servant is allowed to occupy land, rent and revenue free, in consideration of service performed. Such land can be taken back at the pleasure of the donor or his heirs.

#### *E.—Gifts of joint property.*

*Question 1.*—Do you observe the rules of the Muhammadan law

Mushaa. with regard to *Mushaa*? Is the gift of an undivided part of a thing valid, if such thing admits of partition consistently with the preservation of all the uses which might be made of it before partition?

*Answer 1.*—The rules of Muhammadan law with regard to *mushaa* are not known; and there is no clear custom as to whether the gift of an undivided part of a thing is valid. (All tribes.)

*Note.*—No doubt, if the other sharers agreed, the gift of an undivided part of a thing would be valid, and if they did not agree, invalid.

*Question 2.*—Can a co-sharer in joint property make a gift of his share without the consent of the other co-sharers? Gift of shares.

*Answer 2.*—A co-sharer in joint property cannot make a gift of his share without the consent of the other co-sharers. (All tribes having any clear custom, and probably all other tribes also.)

*Note.*—A co-sharer cannot even make a gift of the common moveable property, such as an ox, without the consent of the other co-sharers, though it be less than his own share. We must obtain division first. Shekhs and Sayads say that he need not get division first; but probably they are wrong.

*Question 3.*—If a gift, whether of divided or of undivided village land, be made to a person who is not a member of the village community where the land is situate, will such gift carry with it the right to share proportionately (1) in the *shamilat*, (2) in the miscellaneous village income?

*Answer 3.*—If a gift, whether of divided or undivided village land, be made to a person who is not a member of the village community where the land is situate, such gift, in the absence of express conditions, will carry with it the right to share proportionately (1) in the *shamilat*, and (2) in the miscellaneous village income, if it be made as the gift of the whole land of the giver, or a definite share of it; but not if it be made as a gift of a certain defined area of land, as is usually the case in a gift of land for charitable or religious purposes. (All tribes having any custom.)

*Note.*—For instance, if a man gifts half his land to his daughter's son, the gift carries with it a share in the village common land and common income; but not if he gifts two bigahs to a shrine.

*F.—Revocation.*

*Question 1.*—State under what circumstances a gift is revocable, Possession and relationship. and under what circumstances irrevocable; specify particularly the effect (1) of possession on the part of the donee, (2) of relationship between the donee and donor.

*Answer 1.*—A gift cannot be revoked after having been once made, whether or no the donee be a relation of the donor. As a general rule, the gift is not valid until possession has been given; when given, it cannot be revoked. (All tribes.)

*Subsequent birth of child.* *Question 2.*—Is a gift revoked by the subsequent birth of children to the donor?

*Answer 2.*—A gift once made is not revoked by the subsequent birth of children to the donor. (All tribes.)

## PART II.—SECTION VII.

## PARTITION.

*B.—Partition of lands held in joint ownership, other than common village land.*

## I.—WHERE THE ANCESTRAL SURVIVES.

*Question 1.*—Whose consent is requisite to the partition of a joint-holding? Define the conditions under which such Conditions. a partition can take place. Is it necessary that the wife or wives of the proprietor should be past child-bearing? If so, to what description of property does this restriction apply?

*Answer 1.*—The proprietor can, during his lifetime, whether his wife be past child-bearing or not, distribute the joint-holding as he pleases; but the distribution, if unequal, will not necessarily hold after his death. (All tribes.)

*Note.*—Where the partition made by the father was intended to be equal, it will generally hold after his death.

*Claim by sons.* *Question 2.*—Are the sons entitled to claim partition as a matter of right?

*Answer 2.*—During the father's lifetime the sons cannot, as a matter of right, claim partition, whether of ancestral or acquired property. (All tribes.)

*Note.*—They say that, if the father change his religion, become an outcaste, or adopt a religious life, it is the same

as if he had died. But probably the courts would, except in the latter case, take a different view.

*Question 3.*—Can the father exclude one or more sons from their shares, or otherwise make an unequal distribution? Unequal distribution. If so, is there any distinction as regards the moveable or immoveable, ancestral or acquired, property of the father?

*Answer 3.*—A father can in his lifetime make any distribution he pleases of his property, moveable or immoveable, ancestral or acquired, and even exclude one or more sons from their shares. But, on his death, all the sons become entitled to share the immoveable property according to the rules of inheritance. (All tribes.)

*Note.*—That is, the sons will share the immoveable property equally, if the custom of inheritance be *bháiyon bat*, and by mothers if it be *máon bat*. If the distribution made by the father be a fair one, it is generally allowed to stand; and more regard is paid to the equality of shares in the land than in the moveable property.

Shares of wives.

*Question 4.*—Are the wives, whether childless or otherwise, entitled to shares at partition?

*Answer 4.*—A wife, whether childless or otherwise, is not entitled to share at partition. (All tribes.)

Shares reserved by father.

*Question 5.*—How many shares may a father reserve to himself at partition?

*Answer 5.*—A father may at partition reserve to himself as many shares as he pleases. (All tribes.)

*Note.*—Usually the father remains joint with one son, or keeps one share to himself.

Subsequent birth of son.

*Question 6.*—What is the effect of the birth of a son after partition?

Does such birth entitle the father to cancel the partition? If the father have reserved one or more shares for himself, will such shares devolve exclusively on the son born after partition?

*Answer 6.*—If a son be born after partition, the father may cancel the former partition in favour of the new-born son, or may give him his share out of the portion he has reserved for himself. In any case the son born after partition is entitled to as much of the whole estate as if he had been born before, and to no more. He does not inherit the whole of the portion reserved by the father, to the exclusion of the sons born before partition. (All tribes.)

## II. AMONG THE HEIRS AFTER SUCCESSION.

*Question 1.*—Can any one of the persons upon whom the estate devolves, irrespectively of the sex of such person, or of the relationship in which such person stood to the deceased, claim partition as a matter of right?

State particularly whether the widow, or sister, or unmarried daughter can claim partition. Does the right of the widow to claim partition depend upon her being childless or otherwise?

*Answer 1.*—Any one of the persons upon whom the estate devolves, irrespectively of the sex of such person, or of the relationship in which such person stood to the deceased, can claim partition as a matter of right.

The widow, whether childless or not, the sister or unmarried daughter, can claim partition of her share, if any. (All tribes.)

*Question 2.*—If partition be made, can the widow claim a share? If Right of widow. so, what share; and on whom will it devolve after her death?

*Answer 2.*—A widow, having sons or sons' sons, inherits no share, and does not receive any in case of partition. If she have no son or son's son, she takes a life-interest in her husband's share, and can claim that share in partition: on her death it goes to her husband's heirs.

*Note.*—A sonless widow always takes her husband's share by representation.

*Question 3.*—Must property of the following descriptions be brought into partition,—moveable, immoveable, ancestral, acquired, recovered, nuptial present, inherited from the maternal grandfather, inherited from the father-in-law?

If acquired or recovered property is brought into partition, does the person who made the acquisition or recovery get any compensation? If so, in what way?

*Answer 3.*—All property of whatever description, moveable or immoveable, ancestral or acquired, must be brought into partition (Bráhmans, Gujars, Játs, some Rájpúts).

The same, except property acquired by one of the sharers from his mother's or wife's relatives, which is exempt from partition (Sayad, Shekh, Mughal, Pathán, Gaurwa, Beloch).

All, except property acquired by one of the sharers from his wife's father and relatives (Khánzáda, Meo, most Rájpúts).

All ancestral property, moveable or immoveable, must be brought into partition. All property acquired while living jointly must be brought into partition.

Property, moveable or immovable, acquired by one sharer separately, is exempt from partition. So are jewels or ornaments given to one son's wife by her own relatives. (Ahír.)

*Note.*—Usually, even where jewels are taken into account in the partition, the actual jewels are not distributed, but left with the holder, and allowed for in the partition. As a general rule, each case appears to be decided on its own merits on equitable principles. If a member of the family living separate claims a share of the moveable property, he should bring in his own acquired property.

*C.—Effect of partition by the father on inheritance.*

*Question 1.*—Has a son who remains associated with his father after partition to the remaining sons, the right to exclude them from inheriting the share or shares reserved by the father?

*Answer 1.*—A son who remains associated with his father after partition to the remaining sons cannot exclude them from inheriting the share or shares reserved by the father. (All tribes.)

*Note.*—Generally, if the distribution made by the father was meant to be fair and final, a new distribution will not be made on his death. The immovable property, if distributed unequally, will almost always be redistributed; and the separated sons have a right to demand this. The distribution of the moveable property, though made unequally, is more likely to remain good.

*Question 2.*—Will acquisitions made by a father after partition devolve equally on all the sons, whether or no one or more sons have remained associated with him and whether or no such acquisitions have been made with the share or shares of the associated son or sons?

*Answer 2.*—Generally acquisitions made by the father after partition devolve on all the sons, whether or no one or more sons have remained associated with him, a share being first deducted for the associated son in proportion to his share employed in the acquisition. (All tribes.)

*Note.*—Each case would be decided as seemed fair in the special circumstances.

*Question 3.*—If a son remain associated with his father after partition to the remaining sons, and if such son die childless, can the remaining sons claim his estate in the father's life-time, to the exclusion of the father?

*Answer 3.—If an associated son die childless, the remaining sons cannot claim his estate in the father's lifetime. The father has full power over it. (All tribes.)*

J. WILSON,

*Assistant Settlement Officer.*

GURGAON;

The 17th July 1879. }

## SECTION II.

### THE ROHTAK DISTRICT.

MR. PURSER, the Settlement Officer, has kindly favoured me with the accompanying paper. He does not consider that it can be relied on in doubtful points ; but the Extra Assistant Settlement Officer states that the entries were framed with great care. The general accordance of the rules given with those known to be widely prevalent in the province make them, I think, deserving of a place in this collection. The concurrent results of independent and extra-judicial enquiry in different districts cannot fail to carry weight ; and even if in a particular district there is no such proof of a given custom as would satisfy the courts, still the record unquestionably testifies to the existence amongst the rural population of the legal ideas it exhibits. When we find ideas of the same character repeatedly elicited by distinct investigations at various times and places, there is the more reason to believe either that practice shapes itself upon them, or that they may be safely kept in view for the purpose of ultimate codification.

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*Memorandum on the Tribal Customs of the Rohtak District by Pandit Maháráj Kishn, Extra Assistant Settlement Officer.*

\* \* \* \* \*

In this district the old hereditary tribes are the Játs, Rájpúts, Rangars, Ahírs, Bráhmans, and Patháns (Afgháns). The customs of these six tribes have been recorded by the Superintendents :—

In tahsíl Rohtak, those of the Játs, Rangars, Bráhmans.

„ „ Sámpla, „ „ Játs, Bráhmans.

„ „ Jhajjar, „ „ Játs, Bráhmans, Rájpúts, Ahírs, and Afgháns.

„ „ Gohána, „ „ Játs, Bráhmans, Afgháns.

The original "statements," with the seals and signatures of the zamíndárs attached, have been bound up separately for each tahsíl and placed in the district office ; and copies have been supplied to each tahsíl. To avoid the trouble connected with the statements being in separate volumes, the following summary has been prepared. As a rule, the customs

of the Játs and Ahírs agree; and so do those of the Bráhmans and Rájpúts; and, except as regards *karáo*, there is little difference between all four, while there are certain points of resemblance between those of the Rangars and Patháns; and even the customs of those two tribes are, in much, like those of the Játs.

*Summary of Tribal Customs.*

1. Among Játs, Rangars, and Pathans *karáo* (marriage with a widow) *Karáo.* is allowed, whether she belongs to the same tribe or not; but

Bráhmans and Rájpúts consider it unlawful. Ahírs allow *karáo* with a widow of their tribe, provided it is not with the widow of the man's younger brother: otherwise, as a rule, *karáo* takes place between the widow and her deceased husband's elder or younger brother or cousin. Where *karáo* is lawful, it may take place with a woman of any tribe of the same rank, but not with one of a higher rank, as a Bráhman, or of a lower rank, as a Chamári or Dhánkí; but *karáo* does take place with such a woman, and then it is usual to take her to her new husband's house, where no disputes afterwards arise concerning the legality of the marriage. Where *karáo* is permitted, the rights of the first (*mankúha*) wife and of the remarried widow (*kari húi*) and of their children are quite equal.

As a rule, a man marries a woman of the same tribe, but not one belonging to the four following *gots*, or tribal sub-divisions:—

Marriage.  
His own *gót*;  
His paternal grandmother's *gót*;  
His maternal grandmother's *gót*;  
His mother's *gót*.

But the Afgháns do not follow this rule; and Játs and Ahírs have begun to permit marriage with a woman of the maternal grandmother's *gót*. For some time the Rangars did not consider marriage with a woman of one's own or one's mother's *gót* lawful; but now, in accordance with Muhammadan law, they allow it; and the younger generation thinks it quite right; but old people, to whom it is an innovation, do not approve of it.

2. The ceremony of *karáo* among the Muhammadans consists in the performance of *níkáh*.  
Ceremony of *karáo*. Among the Játs and Ahírs all that is done

is that the widow puts on bracelets and the nose-ring and wears some red or other coloured clothes, which are the signs of being married ; for as soon as a woman becomes a widow she gives these up. No informality renders a *karáo* illegal.

3. There is no distinction made between a wife who has Concubines. and has not been a widow. It is not customary to have a wife of another tribe,

or bought, or a slave. The Rájpúts and Rangars do keep slaves\* (*kanízaks*) ; but the children of a slave-girl have no rights of inheritance.

4. There is no tribal custom as regards inheritance *per Inheritance pagvand stirpes* or *per capita*. The custom is different and *chandavand* in different villages, and even in different families. So the custom that has been followed in the village or family must be ascertained ; and it should be followed.

Inheritance of uterine brothers. 5. All the sons of a man by the same wife inherit equally.

6. A stepchild born before or after his mother's remarriage Stepchild does not inherit from stepfather. has no rights of inheritance in respect of his stepfather's property, whether he has inherited anything from his natural father or not. The power of the stepfather to make a gift to it during his life will be considered further on (*paras. 26, 27*).

7. If a stepchild inherits from his stepfather, he does Cannot inherit from both natural father and stepfather. not do so from his natural father as a rule. He can get only one inheritance. When possible, he inherits from his natural father, as his stepfather's relations look down on the step-child.

8. The elder son of a lambardár succeeds to the lambardárship, though he be by a remarried widow. Succession of lambardári.

9. Sons whose father died during his father's lifetime receive Right of children of deceased son to inherit from grandfather. his share on their grandfather's death. In this matter the Patháns and Rangars do not follow the Muhammadan law. If the grandfather was lambardár, the son of his deceased eldest son will succeed to the post, to the exclusion of the younger brothers of the deceased.

10. Whether there are sons or not, daughters or their Right of daughters or their children to inherit. children have no right of inheritance of immoveable property.

\* Of course, these people are free to go where they please ; but by custom they stay with their masters or mistresses.

**11.** It is the custom for the paternal grandmother of a

Succession by female  
ancestors or wives. deceased zamíndár to manage domestic affairs if she, his mother, and wife or wives

survive; next the mother, then the widow. But most courts, without any further enquiry, direct mutation of names in favour of the widow, the result of which often is that the widow remarries and takes away the ancestral property of her co-sharers, and the mother and grandmother of her deceased husband are reduced to want. Enquiry ought in all cases to be made as to whether the mother and grandmother of the deceased are alive; and then orders for mutation of names be passed. The Játs of tahsíl Sámpla say in such cases mutation has hitherto been effected in favour of all in equal shares, and should continue to be so in future.

**12.** If a son dies during his father's lifetime, when the

Succession of widow to  
father-in-law. father also dies the son's widow gets her deceased husband's share, so long as she remains true to him--that is, does not marry again.

**13.** Such cases rarely occur, and there are no precedents

Succession to sonless  
husband of divorced or  
rejected wife. nor any custom, but most people say that if a wife is openly immoral, and her husband divorces her (*tilák dátá hv*), or if he

is a Hindús turns her away, she ceases to have any claim either before or after his death.

Succession to land given  
to a person whose family  
dies out. **14.** When land is given to a person, and after a time his family dies out, the land reverts to the family by whom it was first given.

**15.** The question to what distance in degree of relation-

Succession of very dis-  
tant relatives. ship the right of succession to a person deceased without lineal descendants extends, and whether any attention is paid to the distant relatives residing in the same village where the land is situated, or whether they are lineally descended from the original acquirer of the property, is involved and difficult. The general reply was that, if the land had been bought, it certainly goes to the ancestral heirs of the deceased. If it was given to the daughter's children, as in the case referred to in paragraph 14, it reverts to the donor's family. If the ancestor of the deceased acquired the property at the same time (and that a long time ago), and in the same manner, as the ancestors of the other proprietors of the village acquired their property, those persons who can trace their descent in the direct male line from the said ancestor of the

deceased get the land. If the land was given by the British Government, and the descendants of the donee die leaving no sons, the land goes to the relations of the donee who are descended in the male line from the same ancestor as he, not to the proprietors of the village.

16. The land in this case is divided according to ancestral shares, not according to possession. Shares of very distant relatives who succeed. But if the land belongs to such a person who, dying without sons, leaves no heirs descended from the same ancestor as himself, so that the other proprietors of the village get the land, they then share in the land according to whatever measure of proprietorship is current amongst them.

17. If a deceased has two heirs, one present in the village and in possession of his own land and the other absent or absconded, both get their shares, provided that the latter's name is recorded in the Settlement Record.

18. Daughters, their children, sisters and their children, and others who are not related in the male line to the deceased, have no rights of inheritance. Anything they get is by gift of the heirs.

19. An unmarried daughter is entitled to suitable support till she is married and to have the reasonable expenses of her marriage paid.

20. A widow is entitled to all her husband's property, whether joint or divided. If joint, she may claim to have his share separated off. Rights of widow. The co-partners sometimes object and deny her right; but this is simply for their own purposes.

21. If an illegitimate child is born of a widow, it has no claim to any part of her deceased husband's property, nor does the widow retain her right.\* She gets his property for life to support herself as long as she remains chaste—not to squander. And as she loses her right to retain the property on remarriage, there is no reason why she should retain it when she becomes immoral. To let her do so would be to encourage profligacy.

22. A widow has a right to alienate her late husband's property in cases of necessity, such as paying his debts, providing the necessaries of life, paying the revenue, and marrying her daughters.

\* This point is not at all clear; cf. paragraphs 45 & 46.

The right of pre-emption is observed ; and a Hindú widow requires the consent of her husband's heirs, who, if they refuse it, are bound to arrange to supply her necessity.

**23. A creditor is entitled to proceed against the property held by a widow during her lifetime and after her death if she has mortgaged it to him.**

**24. A man has full authority to alienate his moveable property.** The consent of the male heirs is usually looked for in case of alienation of immoveable ancestral property. Acquired immoveable property is at the full disposal of the acquirer ; but as there is very little such, and very little of it is alienated, there is really no custom on the subject, nor are any precedents available.

Distinction between  
moveable and immove-  
able, ancestral and acqui-  
red, property.

**25. It is quite common for people to sell or mortgage their land.** In cases of sale, the right of pre-emption is observed.

**26. A man may give away a couple of bighas in charity to his parohit ; or, if he has no sons, to his daughter, or her son, or his sister.** No one objects, so long as he does not go beyond this.

**27. If a man who has no sons needlessly alienates his property to spite his heirs,** no attention can be paid to their objections. Only the right of pre-emption is observed.

**28. A man cannot alienate any particular fields of a joint holding without the consent of the other shareholders.** He may, if they agree. In that case, on division the fields alienated will go to the alienee.

Alienation of special portions of joint property.

**29. There is no custom authorising the revocation of a gift.**

**30. As a rule, a brother or a brother's son is adopted.\*** Some adopt their daughter or sister's son ; but this only with consent of their male heirs. There is no limit of age as regards the person adopted ; even a married man may be adopted. So may an only son.

**31. A man may adopt during his lifetime ; and after his death, with his expressed consent, his widow may adopt from amongst her hus-**

\* Or cousin. The nearer the relation the more suitable he is for adoption : thus, a brother is more suitable than a nephew, a nephew than a cousin ; and so on.

band's family.\* Once adopted, a person cannot be deprived of his status of adopted son; and he ceases to have any claims to inherit his natural father's property.

32. On the death of an adopted son, an adoption is allowed; but no second may be allowed during the life of a natural son or of a formerly adopted son.

Elder or younger among brothers may be adopted.

33. As among brothers, the elder or younger may be adopted. There is no custom prescribing one or the other.

34. An adopted son has no right of inheritance to his natural father, even if the latter has no other sons. In this case the property goes to the next heirs.

Adopted son does not inherit from his natural father.

35. This question is already answered in paragraph 22.

36. A widow has no right to give away her deceased husband's property to her daughter's children nor to the children of a former or subsequent husband.

37. An heir does not acquire any right to a larger share in the inheritance than the other heirs simply because he has performed the funeral ceremonies of the deceased. As a rule, all the heirs join in performing them.

38. So, too, they pay his debts according to their shares in the inheritance. One heir does not become entitled to a larger share by paying more than his proportion of the debts of the deceased.

39. If a person reside with one of his heirs and die in his house and that heir performs his funeral ceremonies, he will be entitled to all the deceased's moveable property; but the immoveable property will be divided among all the heirs according to the ordinary law of inheritance.

40. A daughter or a daughter's children can acquire no right to a man's property from residing with him at the time of his death, even though he makes a verbal gift of his property to them. To give them any right,

\* There is a great difference of opinion as to whether she may adopt of her own will if he has not given authority; but she probably can—at least does.

he must have their names substituted for his during his lifetime, with consent of his heirs.

**41.** A son-in-law residing with his wife's father gets no share of his property. If in any way it happens that he does, there is nothing to prevent his inheriting from his own father too.

Residence with wife's father confers no right on son-in-law.

Widowed daughter or sister supported by deceased entitled to maintenance.

Wills.

**44.** If there

Shares of widows among themselves.

the sons succeed. If one widow has a son or sons and the other has not, the property goes to the sons. The widows are entitled only to maintenance. If the husband has during his life set apart any property for the support of a sonless wife, she will remain in possession of it for her life on his death; but she may not alienate it.

Secret immorality does not determine a widow's possession;

but remarriage does.

**47.** A natural

Rights *inter se* of natural and adopted sons.

son born after the adoption of a son by his father and the adopted son receive equal shares; but the natural son succeeds to the post of lambardár, though they are younger.

**48.** A man has a right to distribute his land among his sons and grandsons for his lifetime as he sees fit; but on his death it must be redistributed according to the usual law

of inheritance.

**49.** When the inheritance is *per stirpes*, the uterine brothers of a deceased person who leaves no sons succeed to his share. When it is

*per capita*, all the brothers by the same father—whole and half brothers—succeed.

**50.** By tribal custom a man who once becomes a fakír

\* What they call a will is merely a dying request, which they regard or not as they see fit

Effect of becoming a fakír. is not entitled to get back his paternal inheritance in case he ceases to be a fakír; for, becoming a fakír, he, as it were, becomes a member of the fakír's family, *i.e.*, he is called the son of the fakír whose disciple (*chelá*) he becomes; and is entitled to inherit his property, and so cannot be entitled to inherit from his natural father. It is not a question merely inside a tribe; but he ceases to belong to one tribe and becomes a member of another, nor is it a question of religion, but rather resembles adoption, and has analogous consequences.

**51.** As a rule, the mother or the paternal or maternal Minors : their Manager. grandmother becomes the manager (*sar-baráh*) of a minor proprietor of land (*khewatdár*); or else one of his paternal male relations acts. The manager gets nothing but the profits of the property. The income of such property is generally small, and no written accounts are kept. Such property may not be alienated; but in case of great need it may be mortgaged. As the khewatdárs are people of small means, no disputes arise concerning the profits of the land during the time it has been in charge of the manager.

**52.** If a minor's mother remarries, she continues his Effects of widow who manager till he comes of age. If she is a manager remarrying. refuses to act, one of his paternal or maternal relations manages the property and takes care of the minor.

**53.** If a minor is in debt, his creditor proceeds according Debts of minors. to the general law of the land.

## SECTION III.

### THE KANGRA DISTRICT.

IN all enquiries into the origin and development of rural institutions in the Punjab, the Kangra District has special importance and interest. Removed by situation and history from the full tide of successive conquests, the Kangra Valley was the seat for many hundred years of a Hindú kingdom; whilst the more distant regions of Seoráj and Láhoul still preserve an organisation of the family far more primitive than any to be met with in the Punjab plains. The Kángra District, therefore, stands apart from the rest of the Province; and its circumstances give emphasis to the remark that this Province is not an homogeneous whole, ethnologically and historically similar, which could at once receive uniform legislation touching substantive civil rights. Fortunately there is no district of which the social characteristics have been more fully or graphically described. The well-known Report of Mr. Barnes dealt, as regards social phenomena, with Kángra Proper only, not with the Kulu tahsíl, including Kulu, Láhoul, and Spiti. But this omission has been supplied by Mr. J. B. Lyall, from whose Settlement Report I have taken a few passages bearing more immediately on the subject of the present compilation. The Reports of Mr. Barnes and Mr. J. B. Lyall would, in integrity, be necessarily kept in view by any one endeavouring to further Punjab codification. Such outlying parts of the Province as Kángra often supply a clue explaining institutions of which the origin may, in the Doabs, have been obscured by the lapse of time.

*“ § 1. Customs in Kángra Proper regarding inheritance, marriage, stepsons, adoption, and rights of widows and daughters.*

“ 74. I may as well give here a rough summary of the customs prevailing in Kángra Proper regarding inheritance, rights of widows and daughters, powers of gift, adoption, &c.

“ Except in those tálúqas of Núrpúr the tenures of which assimilate to the plains, it is the general custom of all tribes in Kángra Proper for the *jhetá bétá*, or eldest son, to get something as *jhetunda* in excess

of the share which the other sons inherit equally with himself : this something may be a field, a cow or ox, or any other valuable thing. The Gaddís say that among them the eldest son gets a twentieth of the paternal estate as *jhetunda*, but in return is saddled with an extra twentieth of the paternal debts, if any.

"In case of inheritance by sons by more than one wife, the chúndavand, and not the pagvand, rule is followed ; that is to say, the first division of the inheritance is made upon mothers, and not upon head of sons. This rule of chúndavand prevails, I believe, universally among all tribes in Kángra Proper, except the Gaddís, a large section of whom are guided by the rule of pagvand. This section consists of those whose original homes are in Barmáor, as distinguished from Gadderán uráh Rávi, or the southern side of the Upper Rávi Valley in Chamba. Instances are not rare in Kángra, in families of all classes, where, by consent or by interference of the father in his lifetime, the inheritance has been divided by pagvand ; but the general prevalence of the chúndavand rule seems undeniable.

"Something nearly approaching to a custom of primogeniture prevails in a few families. For instance, the Ránas of Habrol, Gambhár and Dhatwál give small allotments only to younger sons, which revert to the Rána, or head of the family for the time being, in case the younger branch dies out ; and the Dhatwál cadets, moreover, have to pay heavy grain rents on their allotments to the Rána, though they are acknowledged to hold as proprietors.

"In the case of the Indauriá Rájpúts, it is asserted that all sons inherit equal shares of the *bás*, or residential estates, and that the remaining which are known as *chaudhár* estates, go to the eldest son as *chaudri*. But this asserted custom is somewhat obscure and is disputed. The fact is that the *chaudrís*' interest in the *chaudhár* estate has changed in degree and in nature since the days of the Rájas. It then amounted to little more than the right to certain liberal fees on the rents in kind which went to the Rájas ; but the Sikhs leased these rents in kind, and in fact the whole profit and loss on the estates, to the *chaudrís* for fixed sums.

"Among the Kanets of Kodh Sowár, that is, of Chota and Bara Bangáhal, the custom was that the *vands*, or separate holdings, were indivisible. If a man died possessed of one *vand* only, it went to the *kanna béta*, or youngest son ; if he held two, the other went to the next youngest. How this custom arose is explained in this way. In the first place, the *vands* were allotments only capable of properly maintaining one family ; in the second place, the eldest son used to be away in his father's lifetime, doing *chákari*, or feudal service of some kind, to the Rája, and could generally manage to get a grant of land elsewhere, while the younger son stayed at home with his father and succeeded him. An examination of the pedigree trees for these *vands*, or holdings, will show that the custom has been in full force up to the present time, or till very recently. Among the people concerned, opinions differ as to whether it should be enforced by our courts in case of dispute in future. I think it should not ; as, over and above change of circumstances, the tenure has been altered by the first settlement. In place of a mere allotment of fields, the Kanet of Kodh Souár now owns, besides

his fields, a share in the waste lands of an estate which may be compared to a small Swiss canton.

"In respect of questions of legitimacy or validity of marriage, the landholders may be put into two classes, *niz.*, first, those whose women affect seclusion and do not work in the fields, and who cannot contract what are known as Jhinjárá, or widow marriages; and secondly, those who marry widows, and allow their women to work more or less in the fields. Among the former the son of a *rakhorar*, or kept, as opposed to a *biotar*, or married, woman, would be a *sirtora*, or illegitimate, and would inherit no share. Among the latter, the son of any kept-woman (provided she was not of impure race, connection with whom would involve loss of caste) would, by custom or past practice, share equally with the son of a wife married in the most formal manner. Very little outward ceremony is used in the case of a Jhinjarára marriage. It is doubtful whether concubinage, accompanied by the putting off of the outward signs of the widowed state (*i.e.*, resuming the *balú* or nose-ring), is not sufficient to make a valid marriage according to the real custom of the country; but the husband generally celebrates the event by a feast, and there is a tendency, which I think is right, to consider this a necessary formality. The Gaddís say that among them if a widow has been, as they understand it, lawfully obtained from her guardians in consideration of value given, then she is reckoned a wife, whether any ceremony be performed or not. The feeling among the Kanets is the same.

"Pichlags," that is, sons begotten by a first husband, who accompany their mother to her second husband's house or are born therein, are not entitled to a share. This is a general rule; but the Gaddís and Kanets appear to hold that, if a man takes a widow to wife who is at the time *enceinte*, the child born will be reckoned his child and no 'pichlag.'

"All tribes agree that a man can adopt a son out of his own *gotar*, or clan. It is doubtful whether public opinion would support the adoption of a son from another clan if the kinsmen objected, unless, perhaps, in the case of a daughter's son, and even then there would be a difference of opinion; but the majority would, I think, support the validity of the adoption. Many written deeds of adoption, old and new, are to be found in the district; but writing was resorted to only in cases where a dispute was anticipated because the adopted son was a very distant kinsman, or for some other similar reason.

"With regard to a widow's right to inherit, the Rájpúts, Bráhmans, Khatrís, Mahájans, &c., say that she holds for life on condition of chastity. The Kanets of Kodh Sowár say clearly that, so long as she continues to reside in her husband's house, she cannot be dispossessed, even though she openly intrigues with another man or permits him to live in the house with her. This is the real custom also of the Girths and other similar castes in Kángra, though they do not admit the fact so bluntly.

"With regard to daughters, all classes agree that, in default of sons, an orphan daughter has an interest similar to that of a widow so long as she remains unmarried. The general feeling seems to be that a daughter or her children can never succeed by simple inheritance to landed estate in preference to kinsmen, however remote. This is what

the people say when the question is put to them in a general way; but I have seen them take another view in actual cases, and the history of estates shows that daughters have occasionally been allowed to inherit. All, however, admit that, in default of sons, a father can, by formal deed of gift, bestow acquired land on a daughter or her children; and the people of the Kabzewarí tálíqas say that such a gift of ancestral land even would not be invalidated by objections made by kinsmen too remote to perform 'shrádh' or offer the 'pind' to a common ancestor. According to this, the power to object would be limited to the descendants of the donor's great-great-grandfather, for the worship of ancestors is not carried farther. The Gaddís and Kanets, however, dispense with these 'shrádh' ceremonies, and therefore can give no limit beyond which the claims of kinsmen should be rejected as too remote. This does not imply that among them the feeling of kinship and a right of succession is kept alive longer; the contrary is decidedly the case. By ancestral land is generally understood land once held by the common ancestor, not all land whatsoever inherited by the donor. I have heard the distinction disputed, but am confident that the balance of opinion would be in its favour if an actual case was put before an impartial jury.

## *"§ 2. Forms of marriage in Kulu : questions of legitimacy, and rights of widows and daughters.*

"115. I may mention here that there are three kinds of marriage ceremonies in use in Kulu, *viz.*, (1) Bedi biah, the ordinary Hindú form; (2) Ruti manái, four or five men go from the bridegroom to the bride's house, dress her up, put a cap on her head, and then bring her home to the bridegroom; (3) Ganesh pújá, the forms used by Bráhmaus, Khatrís, Suniyárás, &c., in marrying a Kanet girl. The bridegroom sends his priest and others to the bride's house, where worship of Ganesh is performed, and the bride then brought home. Suniyárás send a knife to represent them. The children of a Bráhman and Rájpút by a Kanet wife are called Bráhmans and Rájpúts: the term 'Ráthi' is often added as a qualification by any one pretending himself to unmixed blood. In the absence of other children, they are their father's full heirs; but in the presence of other children by a lári wife, they would ordinarily only get an allotment by way of maintenance—put by some at one-fifth, but the limit seems rather vague in practice. The rule of inheritance in Kulu among all tribes at the present day is 'pagvand,' or, as it is here called, 'múndavand,' that is, all legitimate sons of one father get an equal share without reference to the number of sons born of each wife or mother. Among the Kanets and the lower castes, the real custom hitherto has been that every son by a woman kept and treated as a wife was legitimate. It was not necessary that any ceremony should have been performed. If no one else claimed the woman and she lived with the man as a wife, the son born from such cohabitation was legitimate. In the same way, among the same classes, a 'pichlag,' or posthumous son (called 'ronda' in Kulu), born to a widow in the house of a second husband, is considered the son of the second husband; and a widow cannot be deprived of her life tenure of her husband's estate for want of chastity, so long as she does not go away to live in another man's house. It appears to be a general idea in Kulu that a father could, by formal deed

of gift executed in his lifetime, give his estate to a daughter, in default of sons, without consent of next-of-kin. It is, I think, doubtful also whether a distant kinsman (say more than three or four generations apart) could claim against a daughter without gift; and it seems generally allowed that a 'ghar jawáí,' or son-in-law taken into the house, becomes after a time entitled to succeed as a kind of adopted son without proof of gift.

*"§ 3. Custom of polyandry in Seoráj."*

"117. Polyandry now prevails only in Seoráj,\* and there the custom seems to be tending to fall into disuse. It is in reality a mere custom of community of wives among brothers who have a community of other goods. In one house you may find three brothers with one wife, in the next, three brothers with four wives, all alike in common; in the next house there may be an only son with three wives to himself. It is a matter of means and of land; a large farm requires several women to look after it. Where there is only one wife to several brothers, it will generally be found that some of the brothers are absent for part of the year working as labourers. In former years I have seen perplexing claims arise from this custom. The sons or grandsons of a family which has lived in polyandry agree to divide the ancestral estate and quarrel as to the shares, some saying that each son should get an equal share; others, that the sons of each mother (where the fathers had several wives in common) should get an equal share; others, that the sons of each putative father should get an equal share. Of late years such disputes have seldom arisen, as it has become a pretty generally recognised principle that, as far as our courts are concerned, the woman in these cases is the wife only of the eldest son, or head of the family; and all sons she may bear must be presumed to be his. This principle agrees in results with what I believe to have been in former times the general rule of inheritance as between the children of brothers all living in community of wives (but it must be confessed that no one custom seems to have been rigidly followed in all cases); on the other hand, as between the children of brothers all of whom did not live in community of wives, the old custom of the country was, I believe, as follows. If of three brothers one separated off his share of the estate and set up for himself, and the other two lived on in common and a son was born in their house, then such son was considered to be the child of two fathers and heir to the estate of both; the separated brother or his children could claim no share of such estate on the death of either of the united brothers. This appears to me to have been the custom in past times; but it is opposed to the principle above mentioned, as at present in force, of only recognising the mother to be the wife of one of the brothers; and I am not aware that it has ever been affirmed by our Courts.

*"§ 4. Customs of inheritance, power of mortgage, &c., in Láhoul."*

"142. The custom of primogeniture prevails in the Thákurs,

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\* i.e., as distinguished from Kulu Proper. Polyandry prevails in Láhoul and in Spiti, as will be seen below.

families. On the death of the father the eldest son succeeds. As long as his brothers live with him, they are maintained and called little Thákurs; but when they set up house for themselves, they get a small allotment of 'garhpan,'\* and under the name of 'dotoenzing,' or younger sons' land, upon which they have to maintain themselves. After a lapse of two or three generations the descendants of younger sons become like other landholders, and have to do some service or pay some rent to the Thákur. Among the subordinate landholders all sons are considered entitled to equal shares of their father's holding; but in practice they seldom divide, and live on with wife, land, house and chattels in common. When asked to defend this repulsive custom of polyandry, they say that their holdings are too small to divide, and that experience shows them that it is impossible for two sisters-in-law, with separate husbands and families, to live together, whereas two or more brothers with a common wife can agree. In Pattan, where the Hindú element prevails in the population, and where the holdings are somewhat larger and more productive, many brothers have married separately and divided house and lands. A very few have done so in Gára and Rangloí also. In such families the custom which has hitherto prevailed with regard to inheritance of the shares of brothers who die without issue is quite clear: such share has always gone to the brothers with whom the deceased lived in unison, or to his issue, to the exclusion of all claim on the part of the separated branch of the family. The most exceptional point in the custom of inheritance prevailing in Láhoul is the fact that, in default of sons, a daughter succeeds to her father's whole estate, in preference to nephews or other male kinsmen: provided that, before her father's death, she has not married and settled down to live on her husband's holding away from home. If she is married and living with her husband in her father's house, she succeeds; and if she is unmarried, she can hold for life as a maid, or can at any time marry and take her husband to live with her. Supposing such a husband and wife to die without issue, it appears to be doubtful who would have the best claim to succeed them,—the next-of-kin to the wife, or to the husband? The opinions of the men whom I consulted seemed to differ; but all agreed that the survivor of the two might lawfully give the estate to any member of the two families. As I have said before, no custom of sale of land exists. The only known instances where land has been sold are the fields on which the Moravain Mission house is established. There is a custom of leasing fields for one or two harvests for a sum in cash down, which in the language of the country is described as a sale; and this peculiarity of idiom at last Settlement led to the belief that a custom of sale prevailed in Láhoul, though not in any other part of the district. Usufructuary mortgages are not uncommon. I did not come across any instance of a 'cháksi'† or 'káng chumpá'‡ having mortgaged his holding; but the general opinion of the

\* Private land.

† A "cháksi" is a family-retainer. A "cháksi" holding is held rent-free on condition of sending one man for continuous attendance and light service on the Thákur or Jágídár, and of furnishing labour on the Thákur's lands on certain days in the year.

‡ "Kang chumpa" may here be translated "cottage." The family in possession of a holding of this kind is bound to furnish one man for continuous work at the Thákur's house, or on his "garhpan" or private land. But the phrase has a different meaning in Spiti.

Thákurs and others whom I consulted was that he could not be prevented from so doing, provided that the mortgagee must pay full rent, unless he or the mortgagor performed the customary service.

### *“ § 5. Primogeniture in Spiti.*

“148. The great mass of the arable land consists of the holdings of the ‘talfás,’ or revenue-payers, which, as I have said above, are each separate estates of the nature of household allotments. Within these estates the following occupants may be found. Firstly, in each there is the Káng chimpa (great house), or head of the family, who is primarily responsible for the revenue, the begár, or forced labour, and the share of common expenses demandable on the whole holding. He is the eldest son ; for, as I have said, primogeniture prevails. But it does not follow that his father must be dead ; for by the custom of the country the father retires from the headship of the family when his eldest son is of full age and has taken unto himself a wife. There are cases in which father and son agree to live on together in one house ; but they are very rare. On each estate there is a kind of dower house, with a plot of land attached, to which the father in these cases retires. When installed there, he is called the Káng chumpa (small house man). The amount of land attached differs on different estates. Where it is big, the Káng chumpa pays a sum of cash, or cash and grain, about equal to its rateable assessment ; but where it is small, as is usually the case, he pays a small cash fee only, which is really rather a hearth-tax than a share of the land-revenue, to which, however, it is credited in collection. The Káng chumpa is not liable for any share of common expenses (a heavy charge in Spiti), nor for performance of begár, or forced labour. On occasions of a great demand for men to do some work near the village, he may be impressed ; but the principle is that he is free. Sometimes, in the absence of a living father, the widowed mother, or the grandfather, or an uncle, aunt, or unmarried sister, occupies the small house and land on the same terms.

“A ‘Yáng chumpa’ is the term used to describe a person living on an estate in a separate house of lower degree than that of the Káng chumpa. Such a person is always some relation of the head of the family. He may be the grandfather, who has been pushed out of the small house by the retirement of his own son, the father ; but it is commoner to find unmarried sisters, aunts, or their illegitimate offsprings, in this position.

“A small plot of land is generally attached to the house, and a few annas of revenue paid ; but rather as a hearth-tax on account of grass, wood, water, &c., than as the share of the land-tax on the plot held. In proof of this some Yáng chumpas have no land attached to the house, but pay like the others. Most of these people would be entitled to some maintenance from the head of the family if he did not give them a plot of land. They are not liable to be impressed for ordinary begár, but must help on occasions of great demand near home. They often do distant begár, however, in place of the head of the family by mutual agreement. On many holdings another class of people are found living in a dependent position towards the Káng chimpa, or head of the family. They have a small house to themselves, with or without a patch of land attached. Generally they pay an anna or two towards

revenue, whether they hold land or not. In fact in this respect, and with regard to liability to begár, they are much on the same footing as the Yáng chumpa. The fundamental difference is that they are not related to the head of the family, and have got their house, or house and land, not with reference to any claim to maintenance, but out of favour, or for the mutual benefit of both parties. They are therefore expected to do a great deal of fieldwork for him.

" People of this class are called 'dotul,' literally 'smoke-makers,' because they have a hearth to themselves, but no other interest in the land.

*" § 6. Spiti custom with regard to inheritance and transfer of land, and other customs connected therewith.*

" 154. I have already described the custom of primogeniture which prevails in the families which own holdings of the first class, whereby the eldest son succeeds in the lifetime of his father. In the case of the little plots held by people of the 'dotul' class, father and son live on together, as the land is too small to be divided, and there are no responsibilities which the father could transfer with the land to the son. In the same way two or more brothers of this class live on together, often with a wife in common, till one or other, generally the weakest, is forced out to find a subsistence elsewhere. Working for food or wages, and not the plot of land, is the chief source of subsistence to these people. Sometimes the son of a dotul becomes a monk; but, as a rule, this profession is confined to the younger sons of the regular land-holders, who, as I have said before, take to it of necessity, but get as maintenance the produce of a field set aside as 'táo' or 'tázing' (from 'tába,' another word for 'láma'). It is, however, only the second son who is entitled to claim 'tázing'; and many do not take it from their elder brothers, and have all in common with him, including their income from begging, funeral fees, &c. This is to the advantage of the elder brother, as a celibate monk's expenses are of course very small. When there are more than two brothers, the younger ones, though they cannot get 'tázing,' are considered entitled to some subsistence allowance from the head of the family; but, in return, they do certain kinds of work for him in the summer, during which season only the elder monks remain in the monasteries. For instance, as long as they are 'chambath' or 'getsal,' that is, neophytes or deacons, and not 'gelong,' or fully-ordained monks or priests, they will carry loads and do all fieldwork except ploughing. When 'gelong,' they will cook, feed cattle and sheep, and do other domestic services, but not carry loads or cut grass or wood. But 'once a monk always a monk' is not the law in Spiti. Supposing the head of a family to die and leave a young widow with no son, or a son of tender age only, then the younger brother, if there is one, almost always elects to leave the monastery, and thereupon he is at once considered his brother's widow's husband. She cannot object; nor is any marriage ceremony necessary. If there was a son by the elder brother, he of course succeeds when of full age, and his mother and uncle retire to the small house, and the other sons, if any, go into the monasteries in the usual way. So, again, if the

head of the family has only daughters, and having given up hope of getting a son, wishes to marry one of the daughters and take her husband into the house as his son and heir, it generally happens that the younger brother in the monastery objects, and says that he will leave the priesthood and beget a son. In such case his right to do so is generally allowed. Sometimes he will marry a wife to himself, and put his elder brother in the small house ; sometimes, by agreement, he will cohabit with his sister-in-law in hope of getting a son by her. A monk who throws off the frock in this way has to pay a fine to his monastery. Many decline to become laymen. I believe that this is a rule in the case of those who have attained to the grade of 'gelong.' Where the láma brother declines, then it is agreed that in the lower part of the valley (*i. e.*, Pín Kothi and Sham) the father or widow-mother can take a son-in-law to live in the house and succeed as son and heir, and no kinsmen (if there are any) can object. In the upper part of the valley this right does not appear to be so clearly established ; the objections of near kinsmen are sometimes attended to, or a field or two given to them by way of compromise. Kinsmen, however, are of course very few, as the only way in which a younger brother can found a separate family is by becoming son-in-law and adopted son to another landholder. Such a man might claim on behalf of his younger son, but not on his own behalf, or that of his eldest son ; as it is a rule that for each holding or allotment there must be a separate resident head of the house to do service for it as well as pay the revenue. I believe that sometimes an illegitimate descendant of the family, who has been living on the estate as a 'Yáng chumpa,' will claim as a kinsman and succeed ; but he cannot be said to have any absolute right or title. Unmarried daughters of a landholder are entitled to maintenance from their father, brother or nephew ; that is, from the head of the family for the time being. He must either let them live in his house on equal terms with his own family, or must give them a seprate house and plot of land. They forfeit their claim if they go away to live in any other man's house ; but no other act of theirs will entitle their father or his successor to cast them off, or resume the house and plot of land once given during their lifetime. Many women live and die as spinsters in their fathers or brothers' houses. Their chance of marriage is small, as all younger sons become monks ; and the monks are bound to celibacy (except in Pin Kothi) and bigamy is only allowed in the case of the head of a family who has no son, nor expectation of getting one, by the wife he first marries. In case the brother-in-law of a widow does not come out of the monastery to take his deceased brother's place, or in case there are no brothers-in law, the widow can marry again, and does not forfeit her interest in the estate by so doing so long as she continues to reside on it. On the contrary, in default of issue by the first husband, the children by the second will succeed to the estate. She can marry any person of the same class as herself. If there happens to be a near kinsman available, she would be expected to select him ; but whether it would be absolutely obligatory on her to do so is not quite clear. A marriage feast is given to celebrate the event.

" No instance can be quoted of a landholder having sold the whole or a large part of his holding ; but the custom of selling small portions is said

to be ancient. The general idea seems to be that no one could question the validity of the sale of a whole holding except the son or next heir. Two kinds of mortgage are in vogue. By one the land is made over to the mortgagee in lieu of interest till payment of the principal; in the other, it is made over for a fixed term on the calculation that the debt to the mortgagee will be liquidated in full within that time by the produce. The mortgagee ploughs, sows and reaps; but the mortgagor manages the irrigation and gets the straw for his trouble. Such a thing as an absolute gift of land appears to be unknown; and the general opinion seems to be that no man can give away land to the prejudice of his children, or that, if he did do so, the gift ought to be treated as invalid unless they had grievously misbehaved. It seems the general opinion that, in future, a man ought to be allowed to give away his estate in the absence of any children or brothers or near kinsmen. Formerly the State would have interfered and put forward a claim. It is even now allowed that, in default of heirs or gift, the estate would lapse to the State; but our Government hitherto not looked after its rights in this respect; and I have heard of one or two instances of such estates being appropriated in late years by the landholders of the village, and granted by them to some new man for a sum of money down, which they divided among themselves. Perhaps this should be conceded in return for the joint liability for the revenue which we have imposed on the people.

#### *“ § 7. Customs in Láhoul and Spiti connected with betrothal, marriage and divorce.*

“165. The best general account of the social customs of the Botiás will be found in General Cunningham’s Ladákh; but in the country I am writing about, and especially in Láhoul, the practice of the present day will be found to differ in some details. The religious ceremony consists in almost all cases in the simple reading of prayers or passages from the holy books by a láma, while the whole company of men and women sit round with clasped hands and downcast eyes and repeat the verses after the láma. The social celebration of all these events consists mainly of feasts in which much ‘cháng’\* is drunk. In Láhoul the decisive point in the negotiation for a betrothal is the acceptance or refusal of a pot of ‘cháng’ sent to the father of the bride. If he drinks, the affair is settled without more words. In Láhoul, polyandry, or the taking to wife of one woman by several brothers, is a recognised institution, and is very general: the object is to prevent the division of estates. I remember a case which came before me in which one of two brothers living in polyandry much wished to separately marry a girl by whom he had an illegitimate child; but the wife of the family objected strongly, claiming both brothers as husbands, and refusing to admit another woman into the household; and she eventually prevailed.

“In Spiti polyandry is not recognised, as only the elder brother marries and the younger ones become mousks; but there is not the least aversion to the idea of two brothers cohabiting with the same woman: and I believe

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\* A kind of beer brewed from rice and barley.

it often happens in an unrecognised way, particularly among the landless classes,\* who send no sous into the monasteries. I heard in Spiti that when the bridegroom's party goes to bring the bride from her father's house, they are met by a party of the bride's friends and relations who stop the path. Hereupon a sham fight of a very rough description ensues, in which the bridegroom and his friends, before they are allowed to pass, are well drubbed with good thick switches.

"In Spiti, if a man wishes to divorce his wife without her consent, he must give her all she brought with her, and a field or two besides by way of maintenance. On the other hand, if a wife insists on leaving her husband, she cannot be prevented from so doing; but if no fault on the husband's side is proved, he can retain her jewels: he can do so also if she elopes with another man, and, in addition, can recover something from the co-respondent by way of fine and damages. There is a recognised ceremony of divorce, which is sometimes used when both parties consent. Husband and wife hold the ends of a thread, repeating meanwhile—'One father and mother gave, another father and mother took, away: as it was not our fate to agree, we separate with mutual good-will.' The thread is then severed by applying a light to the middle. After a divorce a woman is at liberty to marry whom she pleases. If her parents are wealthy, they celebrate the second marriage much like the first, but with less expense; if they are poor, a very slight ceremony is used."—*Kângra Settlement Report by Mr. J. B. Lyall, 1872.*

The custom amongst the Kanets of Kodh Sowâr whereby the youngest son succeeds resembles the well-known 'Borough English' under which the youngest son, and not the eldest, succeeds to the burgage-tenements of the father.—See Sir Henry Maine's explanation (*Early History of Institutions*, pages 222-24).

The curious practice in Spiti which allows the eldest son to succeed in his father's lifetime, the latter retiring to the small house, has a parallel in Würtemburg. On the larger peasant farms "the eldest son commonly succeeds to the whole property, often in the father's lifetime. When the parent is incapacitated by age from managing his farm, he retires to a small cottage, generally on the property, and receives from the son in possession contributions towards his support both in money and kind." A like custom is found in Bavaria (*Cobden Club Essays, 1871-72: The Law of Primogeniture*, by the Honourable G. C. Brodrick, pages 79-80).

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\* It is stated above to occur amongst the "dotul" class.

## SECTION IV.

### THE LAHORE DISTRICT.

LEAVING the Kangra hills, we pass now to the heart of the Punjab Proper. As is mentioned in the Introduction, Tribal Records have been drawn up for the Lahore District, but they have not been abstracted.

§ 1. *Marriage*.—The report, however, on the Lahore Settlement of 1865-69 by Mr. Leslie Saunders throws some light on questions connected with marriage in the Bárídoab. The form of chadar dálna, which exists here, is evidently the same as the *karáo* in Gurgaon and Rohtak.

“ The ceremony,”\* says Mr. Saunders, “ is of a light and easy kind, and is generally performed when a brother-in-law marries his deceased brother’s wife ; for the old custom mentioned in St. Mark, Chapter XII, is still in vogue among the Játs of this country.†

“ In other cases,” he continues, “ the marriage of a Hindú widow is rare, and this custom leads to great immorality ; and consequently Hindú widows bear but an indifferent character in the country side. The Sikhs and Guláb Dásis‡ permit the marriage of widows. Divorce is seldom resorted to, except in the case of adultery. Adultery is said to be most common amongst women who have had no children.”

In the passage in St. Mark there is an obligation on the brother-in-law to marry the widow in discharge of a duty, *viz.*, to raise up seed to his brother. It is not clear from the Settlement Report whether the Játs regard the marriage as a duty or as a right. We shall see that in Pesháwar it is a right ; and the general absence of any ceremonial in Spiti would point to the same conclusion. Sociologically the difference is material. If the marriage is a right, the argument that it is a form of succession by brothers, is perhaps somewhat strengthened. The Jewish law is more clearly apparent from Deuteronomy, Chapter XXV, verses 5 to 10, and Ruth, Chapter IV, then from Mark, Chapter XII.

\* Settlement Report, paragraphs 219, 220.

† See McLennan, *Studies in Ancient History*, 1876, pages 142-166, where (page 165) he infers that polyandry in the Tibetan form prevailed at one time throughout India.

‡ The sect of the Guláb Dásis is a very curious one. The founder, who is now dead, used to reside at Chattiánwála in the Kasúr tahsil. They admit any caste ; but restrictions as to food and marriage are maintained. They assert that man is of the same substance as the deity, in whom he will be absorbed, thus attaining immortality. The Guru lived in open adultery without causing scandal amongst his followers, and the sect see no harm in incest.

With reference to the re-marriage of widows amongst the Sikhs, it will be remembered that it was in the Ját country that the religion gathered strength.

I resume my quotations from Mr. Saunders' report :—

" 222. Marriages are seldom effected without the payment of money ; and daughters are popularly supposed to fetch from Rs. 100 to Rs. 500, but the market price varies according to supply and demand. Some money is given on betrothal ; and generally a further sum when the marriage is consummated and the daughter is handed over to her husband. Sometimes the father will get a piece of land for his daughter's hand : but this is rare, and only given when an object is to be gained, such as marrying into a higher class or clan than the bridegroom could ordinarily aspire to. Raíns do not accept money for their daughters ; and in fact this avarice is not so common with Muhammadans as with Hindús.

" 223. Marriages are effected between members of the same class or tribe (zát). For instance, most Játs will give and take each other's daughters ; but the particular clan or *got* to which she (*sic*) belongs is excepted, as being within the prohibited affinity for a marriage to take place. The Dogars intermarry amongst themselves, and are the only tribe I know of who follow this practice."

We shall see below that the Muhammadan Chattas and Tárars in the Gujránwála District allow marriages of close affinity. Mr. Wynyard in paragraph 383 of his Umballa Settlement Report states that in that district Rájpúts intermarry with Rájpúts of their own tribes.

The description given by Mr. Saunders is not very precise ; but it is evident that the system he refers to is in principle identical with that stated in detail for Gurgaon. In Lahore, as in Gurgaon, the general rule would be that a man must not marry a woman of his own *göt*. Here, too, it may be said that the girl is regarded as a valuable piece of property, betrothal as a contract to transfer it, marriage as the transfer of ownership, and *makláwa* as the transfer of possession.

§ 2. *Customs of the Játs : Karewa*.—I take from Mr. (now Sir Robert) Egerton's report on the first regular Settlement of the Lahore District a passage (paragraph 66) that goes to support the belief that Ját customs belong to an earlier stage in juridical development than the Hindú law. That does not permit second marriages of women ; and in Manu, Mr. McLennan points out, the obligation on the brother to raise up seed to the deceased arises only if the deceased leave no son, the practice already having fallen into disrepute.\* Among the Játs the practice is in full

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\* *Studies in Ancient History*, 1876, pages 161-162.

vigour ; and if Mr. McLennan's theory that polyandry preceded monandry and polygamy, and that *karewa* marriages are a survival of polyandry, because they indicate the succession of brothers as under polyandrous arrangements, is sound, it follows that the Ját rule is more primitive than the Hindú one.

"The Játs are industrious, active and intelligent. They are not good Hindús ; and many of their practices—marriage with their deceased brother's widow, called *karewa* or *darewa*, eating bread cooked at a public oven, purchase of wives, and excessive love of spirits—are quite abhorrent to high-caste Hindúism. The worst points in their character are avarice and incontinence. They will steal away anything, and will run away with any woman. Cattle-stealing is hardly considered an offence amongst them ; and the standard of female virtue is very low. Marriages between a Sikh and a Musalmán are not unknown ; and the offspring become Sikhs as if the mother had been a Hindú. This practice is, however, reprobated by the majority."

The re-marriage of the widow by the brother of the deceased, and the fact that the children follow the religion of the father, both afford testimony to agnatic feeling ; but a low standard of female virtue, and a habit of abduction on the part of the men, would obviously tell against the stability of the agnatic group, because they diminish the certainty of male parentage.

§ 3. *Inheritance*.—Some further information about the Játs of Lahore is contained in the two succeeding paragraphs :—

"69. The law of inheritance to land is equal division amongst the sons (called ' *pavgand*' ) ; division according to wives is never permitted, unless the father have in his lifetime made the division himself by this rule. The right of inheritance in the female line is not admitted as a right ; but in villages where population is scanty and land abundant, heirs in the female line are often permitted to take up the share of their maternal grandfather ; they generally abandon their own paternal inheritance in such cases ; but this is optional.

"70. As a general rule, a proprietor may dispose of his property as he likes in his lifetime, provided his coparceners' consent, and the arrangement holds good after his death ; but in all questions where no such disposition has been made by the proprietor, the inheritance runs strictly in the male line after his death, the heir being obliged to provide for the widow and daughters of the deceased."

## SECTION V.

### THE MONTGOMERY DISTRICT.

THE following extracts and notes from Mr. Purser's Settlement Report of 1874 bring out these points :—

(1) Muhammadan tribes converted from Hindúism centuries ago retain Hindú observances ; (2) the Beloch tribes, always Muhammadan, also practise some Hindú ceremonial ; (3) the chúndavand form of inheritance, and (4) chandar-dálna marriages occur ; (5) among Muhammadan tribes generally adoption is very rare. The first four of these propositions will also apply in the case of Gurgaon. The fifth requires the qualification that the Muhammadan tribe who there recorded that they had not the practice of adoption were precisely those who may be presumed not to be of Hindú descent, *viz.*, Shekhs, Sayads, Mughals, Patháns, and Beloches. The Gaurwa Musalmáns are possibly an exception.

#### *§ 1. Origin of the chief tribes.*

“ 29. It would be useless to go into any long details concerning the origin of the different tribes and their sub-divisions or ‘Múhíns.’ There is a wonderful similarity between all their traditions. The ancestor of each tribe was, as a rule, a Rájpút—a Rája of the Solar or Lunar race—and resided at Hastinápur or Dháránagar. He scornfully rejected the proposals of the Délhi Emperor for a matrimonial alliance between the two families, and had then to fly to Sirsa or Bhatner, or some other place in that neighbourhood. Next, he came to the Rávi, and was converted to Islam by Makhdúm Baháwal Hakk or Bábá Farid. Then, being a stout-hearted man, he joined the Kharrals in their marauding expeditions ; and so his descendants became Játs. In Kamr Singh’s time they took to agriculture, and abandoned robbery a little ; and now in the Sirkári Ráj they have quite given up their evil ways and are honest and well-disposed.”\*

§ 2. *Remarks on the customs of certain tribes.*—The *Kharrals* by the last census number 16,583; they are Muhammadans, and were Rájpúts. They still follow many Hindú customs, especially on the occasion of marriage. The *Káthias* are Panwár Rájpúts of the Muhammadan faith, numbering 1,836. They observe Hindú ceremonies. The *Siáls* are in two branches—the Fattiáns and Tahráns.

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\* Settlement Report, Part I, Chapter II.

They were Panwár Rájpúts of Dháránagar. Siál, the eponymous ancestor, was converted to Islam by Bábá Faríd. Hindú ceremonies are observed. They do not keep their women in "pardah." The number stated in 1868 was 5,265. The *Beloches* belong to the Kút, Rind and Leshari tribes: they are some 8,000 in number. Though always Muhammadans, they practise some Hindú ceremonies; but attach more importance to learning the Koran than their neighbours do. The *Mahárs*, who claim relationship with the Joyás, contrary to the usual Ját customs, generally inherit chúndavand, not pagvand. All the above tribes are more or less addicted to cattle-stealing. The *Máhtams* are a low Hindú caste, chiefly found in Dípalpur on the Lahore border. Their story is that they were Rájpúts; that they adopted the custom of marriage with widows according to the form of chadar dálna and so became Súdras.

§ 3. *Marriage*.—Among Muhammadans "the mirási conducts the negotiations for betrothal, coming from the boy's father; among the Hindús the Bráhman does, coming on the part of the girl's father. Among persons closely connected it is considered disgraceful to make marriage a money matter, but not so if the families are of different clans, or even different sub-divisions of the same clan." As a rule, the girl is bought. The people are of opinion that the mercenary nature of marriage has been developed only since British rule.

"If the go-between is successful, the father of the boy goes to the girl's father and arranges matters. For the girl's father to move in the matter first would be considered disgraceful. The betrothed pair may be mere children, in which case the marriage takes place when they have grown up. Marriage is attended with few expenses, except the dowry."\*

§ 4. *The value of the Tribal Record*.—The subjoined estimate of the value of the riváj-ám well deserves quotation:—

"10. The riváj-ám \* \* \* \* contains the answers of the chief men and elders of each tribe to a series of questions concerning inheritance, adoption, gifts, &c., put to them at an open meeting. As far as possible, their answers are supported by a statement of actual precedents, and any known exceptions to the general rule are also recorded. The great value of a trustworthy account of the *lex loci* of this sort is obvious. I have attested a large number of these riváj-áms in the Montgomery District. I think they ought to be received with much caution. In the first

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\* Settlement Report, Part I, Chapter II, paras. 26, 30, 32, 33, 35, 36, 41 and 58.

place this document is always prepared first by the Superintendent. He is, of course, utterly unable to go out of the beaten track, and the track in this case occasionally leads one into the slough of downright nonsense. If a correct record of the *lex loci* is required, the first thing to do is to revise the Hindústání Settlement Manual, as regards the translation of the questions given in Settlement paper No. 31. It is incorrect, and is couched in the most barbarous and unintelligible Hindústáuí one can imagine. I did something to correct this, and had the more glaring errors amended. When the questions are incorrect, the answers are likely to be the same. In many cases the people have no custom at all on the points to which the questions refer. Thus, among the Muhammadan tribes generally, adoption is very rare; but there seems to be no custom as regards the power of adoption. Yet the chief men, when asked,—‘Can a man adopt?’—will be sure to say ‘yes’ or ‘no’ without considering whether there is any custom or not. Similarly there is great doubt as to the cases in which a gift of land can be made to a daughter; and on this point, too, I think in most cases there is no custom. Again, the people will deny that a verbal gift can be made, but say a written gift is valid. But considering that not one man in a hundred can write, it seems incredible that there can be any customary distinction between verbal and written gifts among them. Occasionally words are not properly understood. Thus ‘parkat’ means the posthumous son of a man born in the house of his stepfather. But in the Montogomery tahsíl I found it used to express the son of the second husband; so that the Montgomery records are in most cases doubtful where I had not an opportunity of correcting them. From what I have here said I think it will be seen that these records of usages and accepted rules must be received with caution. Still they are of undoubted value if so received, and the precedents and exceptions entered in them will always be useful. But in nice questions, such as the distance in relationship of a male heir from the deceased which is great enough to entitle the daughter of the deceased to succeed in reference to the male relation, I should attach no weight to these records.”\*

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\* Settlement Report, Part III.

## SECTION VI.

### THE GUJRÁNWÁLA DISTRICT.

§ 1. *Abstract of the information.*—The particulars given in Lieutenant (now Major) Nisbet's Settlement Report of 31st October 1868 are not full. They are contained in some general remarks on the first of a series of settlement maps. It appears that there are 174 clans or tribes in the district, but accounts are furnished of only 15 clans, who have a considerable number of villages in the same locality. A large proportion of the agricultural tribes claim a Rájpút origin. Out of the 15 selected clans, daughters do not inherit in six, *viz.*, the Sekhú, Chíma, Guráya, Aulakh, Varaich and Virak; in one clan, the Dhotar, they do not inherit ancestral property; in the remaining cases it is not stated whether daughters inherit or not. Sons amongst all 15 clans take pagvand, except that amongst the Malhi Rájpúts, who are mostly Hindús, the custom of pagvand and chúndavand both obtain. As regards adoption, in one instance, the Chattalhs, nothing is said; in two, the Sánsi and Lodike, adoption is usual, but no restriction is mentioned. Elsewhere it is allowed within the tribe, except amongst the Tárars, where it is not usually recognised. In this case the adopted son cannot inherit ancestral property; but there are three instances in which the rule has been broken through. In respect to three clans—the Dhotar, Guráya, and Virak—the limit of ten years of age is expressly referred to. The general inferences which are suggested by the tabular analysis which I have framed from Major Nisbet's remarks may be thus stated:—

I. For the purposes of devolution of property in land kinship is agnatic.

II. The sons share equally. Distribution primarily in uterine shares does occur, but it is rare.

III. Adoption is common, but it is usually confined to the tribe or clan; and there is not infrequently the additional restriction that the person adopted must not be more than ten years of age.

IV. Common clanship is sometimes, probably amongst Muhammadans, a reason for marriage, and sometimes, probably amongst Hindús, a bar to it.

It will be understood that the data are insufficient for any confident generalisation as to the district as a whole. It merely seems probable, from the facts stated, that the above conclusions might apply.

§ 2. *Tabular analysis of customs in 15 clans.*—This is appended. Where the spaces have been left blank the report affords no information

1	2	3	4	5	6	7	8
No.	Name of clan.	Whether Hindú or Musalmán.	Tribe.	Rule of intermarriage.	Do daughters inherit?	How do sons take?	Adoption.
1	Dhotar	H, though individuals are M.	Rájput	Intermarry with Chatthi, Virak, Varaičh, Hanjra, Bayra, and other tribes. With all other tribes, except Gonds and Bals, whom they claim as sub-divisions of their own clan.	Not ancestral property. No	Pagvand " "	Up to ten years, and only within the tribe. Recognised, if within the tribe.
2	Sekhú	.....	"	"		"	...
3	Chína	Chiefly M.	"	Intermarry with Virak, Varaičh, Tarar, Sandhú, Gurdiya, Dajiva, and others especially Chatthi. The Muhammadans make marriages of very close affinity among themselves, but not so the Hindus.	No	"	Common within the tribe.
4	Chattah	Chiefly M.	"	Intermarry with Chima, Virak, Tázar, and other Jats, but not usually within their own clan. With Guraya, Virak, and other Ját communities. With all Muhammadan Játs. Much addicted to marriages of close affinity within the clan.	"	"	Usual up to ten years or within the clan. Common.
5	Guráya	.....	"	Intermarry with Chima, Virak, Tázar, and other Jats, but not usually within their own clan. With Guraya, Virak, and other Ját communities. With all Muhammadan Játs. Much addicted to marriages of close affinity within the clan.	No	"	Usual up to ten years or within the clan. Common.
6	Sánsi	.....	Bhatti	With all other tribes, except Sekhú and Déo, with whom they claim affinity. With all other Jats, but they avoid marriages of affinity within the clan.	"	"	Not usually recognised. Adopted son cannot inherit ancestral property, but there are three instances to the contrary.
7	Tázar	Nearly all M.	.....	With all other sub-communities	"	"	Very usual within the tribe.
8	Anlakh	.....	Of Solar descent. Rájput	With all other Ját communities With all Jás except, "Waran"	No	"	Common within the clan.
9	Mahí	Mostly H.	.....	With all other Ját communities With all Jás except, "Waran"	Both pagvand and chhindavand.	"	Common within the clan.
10	Varaičh	.....	Claim Solar descent.	With all other sub-communities	No	"	Common under the usual restrictions.
11	Hijrah	Principally M.	Rájput	With all other Ját communities With all Jás except, "Waran"	Both pagvand and chhindavand.	"	Common under the usual restrictions.
12	Mán	.....	.....	With all other Ját communities With all Jás except, "Waran"	Both pagvand and chhindavand.	"	Common under the usual restrictions.
13	Virak	.....	.....	With all other Ját communities With all Jás except, "Waran"	Both pagvand and chhindavand.	"	Common under the usual restrictions.
14	Bhati	.....	"	Fear sub-divisions, (1) Bhatti, (2) Shádi, (3) Bakshi, (4) Ghazi, Bhattis intermarry with all sub-divisions, but do not give their daughters to any of the other three sub-divisions, nor to Ját communities of other tribes. Sub-divisions 2, 3, 4 intermarry amongst themselves, but do not give their daughters to any other Ját communities, though they will take wives from all.	...	"	Common within the tribe and up to ten years. Adoption is usual within the tribe.
15	Lodhi	.....	Claim Solar descent.	Do not give their daughters to other tribes, though the men will take wives from any Ját community.	..	....	Very usual.

## SECTION VII.

### THE SIÁLKOT DISTRICT.

**§ 1. Source of information.**—The Tribal Records for Siálkot were drawn up on much the same model as those for Dera Gházi Khan, which will be noticed below. They do not deal with partition, but adoption is treated. On other subjects they are not so full as those of the district last named. I will give an abridged account of the particulars contained in the printed "*History of Siálkot*,"\* pages 61-84, under these headings :

(1) Rights of sons.		(3) Rights of daughters.
(2) Rights of widows.		(4) Adoption.
(5) Transfer of property.		

The four tahsíls referred to in the papers are Siálkot, Daska, Pasrúr and Zafarwál. The answers of 30 tribes or classes were recorded, including Játs and Rájpúts, both Hindú and Musalmán, Musalmán Dogras claiming a Rájpút descent, Bráhmans, Khattrís, Bhátiás and Bherúpias amongst Hindús, Libáñas and Kaláls, both Hindú and Musalmán, the Muhammadan divisions Shekh, Sayad, Mughal, Pathán, Kakkezai, Awán, Aráín and Pakhiwára, and, in addition to these, the Kamíns.

**§ 2. (1) Rights of sons.**—The general rule amongst all classes is that legitimate sons divide the inheritance. The chúndavand principle obtains very extensively ; but the information is insufficient to indicate any precise law of distribution. The conclusion suggested by the evidence is that a practice once generally current amongst many tribes originally of the Hindú religion is gradually giving way to the institutions of Muhammadans, either as a remote and tardy consequence of conversion, or from contact with people of the Musalmán faith. This, however, is no more than a conjectural explanation of the anomalies which the record displays. To establish the position it would be necessary to show, first, that the chúndavand distribution anciently prevailed amongst tribes either converted to Islam or brought into close relation with Muhammadans, and that it has begun to decay since the new situation existed ; that, secondly, in the same or like tribes, not brought under Mu-

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\* By Munshí Amín Chand, Extra Assistant Commissioner : translated by C. A. Roe, Esq., c.s., Settlement Officer, Montgomery.

hammadan influences, uterine apportionment continues in full vigour; and thirdly, that it never, or very rarely, appears amongst tribes of purely Muhammadan descent; and that when it does so appear its occurrence can be explained either from Hindúizing influences or from long antecedent social history. But, on the other hand, the prevalence of the pagvand rule presents no difficulty either amongst converts or amongst Hindús. That is the normal custom, whilst chúndavand is, in the Punjab generally, an exception which requires special reasons to account for it. It seems probable, therefore, that other causes have been at work to bring about the evident relaxation of the chúndavand rule, besides the indifference of the Muhammadan law to the uterine descent of the sons. The strongest case in favour of the effect of conversion is that of the Ghuman Játs of the Siálkot and Daska tahsíls. There are both Hindús and Musalmáns amongst them; and it is mentioned that some even of the Musalmáns worship an idol of grass at marriage ceremonies—an observance manifestly older than conversion to Islam thus surviving. These Játs were originally accustomed to distribute chúndavand, but now generally give all sons equal shares *per capita*, except in certain families or villages, of which 38 are specified. The general rule of the Kahlwán Játs is chúndavand, but exceptions occur. On the other hand, the general rule amongst the Jatátír Játs is pagvand, similarly subject to exceptions. The Kahlwáns are partly Hindú, partly Musalmán; but some Musalmáns observe Hindú ceremonies on marriage. The religion of the Jatátír Játs is not stated, but presumably they belong to both creeds. Amongst the Guráya Játs, the Hindú taraf of Seoke in the Siálkot tahsíl practise the pagvand custom. The Gurayas are apparently pagvand in Pasrur and chúndavand in Daska. The Silhuria Rájpúts, almost all Musalmáns, adhere to the chúndavand rule, with a few exceptions. The Bhatti and Khokhar Rájpúts of Siálkot, also Musalmáns, are pagvand. The division is also usually pagvand amongst Rájpúts of the Daska and Pasrúr tahsíls. The Khatrís, Bráhmans, Aroras and Bhátiás sometimes follow the one rule, sometimes the other: apparently they go *per capita* in Siálkot and Pasrúr, and *per uteros* in Daska and Zafarwál. The Hindú Libáñas and Bherúpias are pagvand; the Kaláls chúndavand. With the exception of the Musalmán Dogras of Pasrúr (a tribe, as already noted, claiming Rájpút descent), the Muhammadan tribes other

than Rájpúts and Játs are pagvand. This at least is the case amongst Shekhs, Sayads, Mughals, Patháns, Kekkezais, the Awáns of Siálkot and Zafarwál, the Aráíns, and the Pakhiwáras. On the whole, the almost universal absence of the chúndavand rule amongst tribes of purely Muhammadan descent, and its co-existence, in the case of unconverted Hindús, with the pagvand rule, are circumstances in favour of the suggestion made above. I should mention that seven instances are quoted in which the succession amongst Awáns was perhaps chúndavand. This well-known tribe has never been Hindú. But it is not said in what part of the district these exceptions, if such they be, happened; and indeed this portion of the English record is so imperfect that its real meaning is quite undecipherable. There is much else in the record which is extremely doubtful or hopelessly obscure. I have confined myself to those points which appear with a reasonable degree of precision.

All classes agreed that stepsons receive no share in the stepfather's estate, but are entitled to maintenance till maturity. Generally, illegitimacy was regarded as a bar to succession; but all the Játs said a natural son could take if the father in his own lifetime were to acknowledge him as heir, or so appoint him by will. The Minhá, Béjú and Silhuria Rájpúts of Siálkot and Zafarwál made the following very curious reply:—"If a brother of the deceased," *i. e.*, of the natural father "marry her" (*i. e.*, the mother of the natural son), "her son receives the same portion as the legitimate sons; in this case she is called 'ham-dihwál.' But if he do not marry her, she is called 'hambotal;' and her son, who is called a jhitaorah, has no rights. If, however, his father have land, he is entitled to five per cent. of it for cultivation, and to five marlees for a building site." Examples were quoted, but are not given in detail in the translation, and a considerable number of exceptions were stated.

§ 3. (2) *Rights of widows.*—All the tribes were unanimous about the rights of widows, with the exception of some Aráíns of a village in Daska, who said that a widow could transfer her property by gift to a daughter or daughter's husband. If a man die childless the widow or widows will take the entire property for their lives, provided they remain chaste or do not marry again. Widows, save amongst the Aráíns, just referred to, cannot alienate such property by gift or will. Generally they may not sell or mortgage it; but either may be done if the widow has no other means

of paying the Government revenue or her husband's debts, or of providing the expenses of her daughter's marriage. In such cases the widow must first offer the property to the next heir. Should he refuse to advance money on it, she may then mortgage, or, if necessary, sell it to a stranger. I should suppose that this rule is much too broadly put, and that it is not intended that other pre-emptors have no claim when the next heir has declined the option.

§ 4. (3) *Rights of daughters.*—Without exception, Musalmáns and Hindús alike, all affirmed that where there are sons, daughters do not share with their brothers. It was also universally said that the unmarried daughters of a man dying without male issue would hold the whole of the property on a life-tenure until marriage. A great deal more is entered under this heading ; but the record is so drawn up that the replies relate to the customary law of gift, not to the question of daughters' succession exclusively. Whether daughters would exclude the widow is not apparent. We may conjecture that, in the presence of both widows and daughters, all might come in together for life or until marriage. But the provision that the widow may alienate to meet the expenses of the daughter's marriage might imply that the widow would have control of the property subject to maintaining the daughters.

§ 5. (4) *Adoption.*—Amongst the Dogras there is no custom of adoption. Elsewhere, subject to variations in the character and degree of the natural relationship of the adopted son to the adoptive father, the adoption of a relative by a man without male issue is permissible. The person adopted succeeds, on an equal footing with sons of the blood, to the inheritance of the person adopting him : he has no claim on the property of his father by blood, save where the latter dies without male issue. Where the chúndavand custom prevails, the adopted son's portion will first be set aside according to the pagvand rule, and the residue of the property divided chúndavand. It is uncertain whether this last statement purports to be an account of the facts or a proposed rule for the future ; nor is it clear how the share is to be computed. It will be remembered that in Gurgaon the adopted son in a máon bat or chúndavand family takes a share as the son of the wife in whose lap he is placed, that is, if there are two, of the elder wife. But the chúndavand system, I may remark in passing, does not seem suited well to a society where adoption prevails ; and this may

possibly be hereafter found to be some evidence of its belonging historically to a more primitive condition of things than that which is indicated by distribution *per capita*. The Ját tribes, almost without exception, the Khokhars, Bhattís, Kaláls, Bherúpias, Aráíns, Pakhiwáras and Kamíns said that a man should adopt, first one of his brother's and, secondly, one of his daughter's or sister's, children. Failing these, he might adopt any of his "blood relations." A widow might not adopt. The rule of the Khatris, Bráhmans, Aroras, Shekhs, Sayads, Mughals, Patháns, and Kakkezais was very nearly the same. "A man," they said, "may adopt his brother's daughter's or sister's son, or one descended from his own ancestor. He may not adopt any one except the above. A widow may adopt if her husband have given her leave to do so." The Libáñas gave the same reply, except that they did not allow the adoption of a daughter's son. Many Rájpút tribes,\* especially in the Daska tahsíl, said a man might not adopt his son-in-law or his sister's or daughter's son. Amongst all the Rájpúts, the Saroch tribe alone excepted, it was denied that adoption could be effected by the widow. The Awáns, a tribe whose institutions deserve particular attention, said a man may adopt, first, the son of a brother or cousin, secondly, one of his ancestral kinsmen, thirdly, a son of his daughter or sister,—preference being given to nearness of kin. "He may not," they added, "adopt an outsider." It is remarkable that the limit of kinship to which adoption is restricted sometimes coincides with and sometimes oversteps the circle of the agnatic group. But the fact can merely be noted. On the evidence available no explanation can be attempted. It would be interesting scientifically to know whether, before British rule, satí was extensively practised amongst those tribes who deny the power of adoption to the widow. If so, this might account for the circumstance. If it was the theory that the widow should not survive her childless husband, there could obviously be no place in the system for the adoption by her of a son.

§ 6. (5) *Transfer of property*.—"Land," say all the tribes, "is not usually given as dower. Where it is, the woman cannot dispose of it to a stranger if there are sons.

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\* Amongst the Bujwa Rájpúts of the Siálkot District, where a man adopted his brother's son, the brother being himself the adoptive son of another member of the same gót, it was held that the rivájám did not mean that the nearest relative must be adopted so as to invalidate the adoption of a relative otherwise eligible. The rule of *factum valet* would apply. and, as no other custom existed rendering the adoption invalid, it must be upheld.—*Channu and others v. Devi Singh and others*, No. 47 P.R., 1878.

If there are no sons, she may do so, provided she continues chaste." In the presence of sons, a woman cannot dispose of property acquired by her own industry; in their absence, she may do so at pleasure. All were agreed that a man cannot exclude an heir or divide his property unequally. "If he do so in his own lifetime," say the Jâts, "after his death all his heirs can claim their proper shares." It is a very general rule that although one-tenth of the ancestral property may be alienated in charity, more cannot be given away, even to a daughter or a son-in-law, without the consent of the heirs descended from the great-grandfather of the donor. The close resemblance of this rule to that I shall mention hereafter, of the Rájanpúr and Jâmpur Beloches, for the exclusion of the daughter by the near kin deserves to be noted. The group that can in the one case forbid alienation is similar to, but more extensive than, that which, in the other, will take the inheritance in preference to the daughter. The Ját, Rájpút and Hindú tribes, who asserted the right of the descendants of the great-grandfather to veto transfer, all distinguished between ancestral and acquired property. The latter, they said, was subject to pre-emption only on the part of the sons. But this distinction was not generally made by those tribes, including some Rájpúts, who permitted greater authority to the proprietor. "His power," said the Rájpúts of Pasrûr, "is the same over both kinds of property. He cannot alienate it if he have sons, but if he have no sons, he may give it to his daughter's son, or dispose of it in charity." Substantially the same answer was made by the Kalâls, Dogras, Pakhiwâras, Shekhs, Sayads, Mughals, Pathâns and Kakkezais; but of these, the first three said the disposal of the property would be subject to the ordinary rules of pre-emption, and the last five that, in the absence of sons, the property could be disposed of at will.

I have said that daughters do not take any share in the presence of sons; and it will be seen below that this rule is, in at least two other districts—those of Dera Ghâzi Khan and Mooltan—much modified by respect for the precepts of the Muhammadan law, even if these are not always acted on. I will conclude this note by adducing two instances where the Muhammadan law has obviously affected usage, thus providing some evidence, of which there is much elsewhere, that the usage is older than the law. Amongst the Musalmán Ját tribes generally, if there be no sons, and if there be no male descendant of the great-grandfather alive, there is

nothing to prevent a man from giving his property, wholly or partly, to his daughters. If there is such a descendant living, the daughter can only receive *the same share* as she would receive on her father's death. The Awáns and Kho-khars (the latter are Musalmán Rájpúts) say that acquired property may be disposed of at will; but that, out of the ancestral property, only *her appointed share* can be given to the daughter. The conception of a definite share in the estate being assigned to daughters in the absence of sons and near male kin, inconsistent as it is with the generally asserted life-tenure of unmarried daughters, unquestionably testifies to the influence of the Muhammadan law on the ideas, if not on the practice, of the community.\*

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\* In *Ranjha and another v. Must. Bibi and another*, No. 23 (P.R. 1877), the two lower Courts found that by custom of the Awán tribe in the Siálkot District, notwithstanding the riváj-ám to the country, a gift of land by a father to his daughter, he dying without male issue, was valid. The Chief Court dismissed the suit of the collateral relatives of the deceased donor brought to contest the gift.

## SECTION VIII.

### THE GUJRÁT DISTRICT.

THE subjoined extract is taken from the Settlement Report (1870) by Captain (now Lieutenant-Colonel) W. G. Waterfield. The usual features of Punjab custom appear, although with some differences of detail. Thus, we find the widow's life-interest, the chadar-dálna marriage, the exclusion of daughters by sons, and, amongst Hindús who practise adoption, the preference for the adoption of a relative. There is some evidence that the land must not leave the agnatic family without the consent of its members ; and the custom of ghar jawái, as a means of regulating succession, seems to be recognised. But there are several doubtful points in this extract which could not be cleared up without investigating the vernacular records, or perhaps making fresh inquiry in the district. The time at my disposal prohibits my dealing with any other records than those at once available ; and what is here ambiguous will not affect any general conclusions elsewhere stated.

#### § 1. *Landed property and the law of inheritance.*

“ 92. This was ascertained through the medium of 22 questions which are to be found *in extenso* in the ‘ General Reference File for the District.’ They were put at a general assembly to the representatives of the different tribes : and as there is little dissimilarity between the replies, it will be useful to note briefly the general result arrived at.

“ 93. *Question 1st.—Succession of widows.*—If the widow does not marry again, she succeeds to the entire estate of her husband upon a life-tenure.

“ 2nd.—*Transfer by widows.*—The widow cannot, as a rule, alienate by deed of gift or will the estate of her husband, unless she is advanced in years and cannot marry again. Under the latter circumstances she can transfer by gift to any male member of her husband's family, or to the descendants of her daughter under whose care she lives. The transferee will be answerable for her maintenance.

“ She can also sell and mortgage under certain circumstances,—for the realisation of the balance of the Government demand, the payment of her husband's debts, or the marriage of a daughter, or other such personal necessity ; but the law of pre-emption will then come into force.

“ 94. Among Hindús, if any relation of the deceased husband exists, the widow cannot sell or mortgage.

“ 95. 3rd.—*Succession of sons and their issue.*—No rule of primogeniture exists. All brothers will share alike.

“ 4th.—No difference is made between the sons of different wives. All share alike.

“ 5th.—The son-in-law, posthumous or otherwise, has no claim to share in the estate of his father-in-law. He is called a ‘pichlag,’ and is only entitled to maintenance until of age.

“ In Phalián they add that the landowner can, with the consent of his male issue or other near relations, bestow a portion of the estate on his son-in-law.

“ 6th.—A child born out of wedlock of a woman whom the father could have lawfully married is, among Muhammadans, considered illegitimate and cannot inherit.

“ Phalián tahsil adds that the father can, with the consent of his male issue, transfer land to this illegitimate child.

“ 96. *Exceptions by Hindús.*—If the landowner go through the ceremony of throwing a sheet *chadar dálna*) over such a woman, and keep her in his house, her issue will share equally with that of other wives.

“ 97. 7th.—The child of a woman with whom the landowner could not legally marry, such as a professional dancer or prostitute, or a woman of low caste, can receive no share.

“ 98. *Exceptions by Hindús.*—If the landowner become a Musalmán, and marry such a woman, then their issue can inherit.

“ 8th.—In Phalián the son of a female slave, ‘golí,’ is entitled to maintenance up to his majority.

“ 99. 9th.—*Succession of daughters.*—Daughters cannot inherit if there is male issue.

“ 10th.—If a landowner, after his daughter’s marriage, bring her and her husband (his son-in-law) to live with him, and give possession of any land verbally or by deed, that daughter and her issue can succeed to the entire estate. There is no necessity for consulting the other shareholders.

“ 100. *Exception I.*—The Rájpúts of tahsils Kháriáu and Phalián state that daughters can inherit under no circumstances.

“ *Exception II*—Among Hindús, if the landowner adopt the son of a daughter, he can inherit.

“ 11th.—During the last one hundred years the formerly existing custom of giving land as the dowry of a daughter has died out and no longer exists.

“ 12th.—A landowner may in his life-time give possession to a daughter who lives with him ; and if there has been a verbal gift, such daughter or her issue can inherit. No such death-bed gift is valid.

“ 13th.—In the case of a daughter who has thus come into possession dying without male issue, if she in her life-time have put her daughter or that daughter’s issue in possession, such can inherit ; but she cannot within a year or two after death transfer her estate by deed of gift to such daughter or her issue.

“ 14th.—After transfer by gift to a daughter, the landowner can, if male issue is born to him, recall a portion of the gift for the maintenance of such male issue. No such case has ever occurred.

" In Phalián they would share equally.

" 15th.—If a landowner have transferred by gift in his life-time his estate to an unmarried daughter, she becomes the heir ; and her husband, if he live in her father's house, can inherit. If the husband leave his father-in-law's house, the estate reverts to the collateral heirs.

" If there has been no gift, the collateral heirs at once succeed ; but they must marry off the daughter.

" 101. *Exception.*—Rájpúts of Khárián and Phalián state that no daughter can inherit, but the marriage must be arranged for by the heirs.

### " § 2. Adoption.

" 102. 16th.—Not customary in this district.\*

" *Exception among Hindús.*—But no adopted son can himself adopt.

" 103. 17th.—Hindús say that the adopted son must be of the same ancestral stock, or the issue of a daughter or sister. But the adoption will only be valid if it has been adopted in accordance with the rites of the 'shagún.'†

" 18th.—Among Hindus the adopted son is in the position of a begotten son, but loses all claim upon the estate of the father that begot him, unless the latter has no collateral heirs.

" 19th.—An adopted son will share equally with a son begotten subsequently to such adoption.

" 20th.—The adopted son can inherit the estate of the father that begot him in default of other heirs."

### " § 3. Transfer of property.

" 104. 21st.—A landowner can transfer by sale or mortgage either ancestral or acquired property, on the condition that his near relations have the right of pre-emption, and after them the other ancestral shareholders, and then the shareholders of other pattiis and tarafs. If they do not claim the right, he can sell or mortgage to whom he likes.

" 105. But no sale or mortgage made in bad faith to do an injury to son or brother is lawful.

" A landowner can also give away, for religious purposes, from 2 to 10 per cent. of his property.

" 106. In Phalián a man can give away to any religious institution one-fourth of his ancestral and *all* his acquired property.

" 107. 22nd.—No land can form part of the 'stridhan,' or peculium, of the woman in this district."

\* The Deputy Commissioner informs me that adoption is not customary with the Muhammadans of the district, but that it is so with the Hindús.

† 'Shagún' means the ceremony of adoption. The child is placed into the lap of the person adopting him (*god* or *god mén lénā*), a necklace of string is put round the child's neck, and there is some rejoicing, with the usual drum beating and distribution of food.

## SECTION IX.

### THE JHELUM DISTRICT.

**§ 1. The method of compilation.**—Mr. A. Brandreth explains his method in paragraphs 296 to 298 of his Settlement Report of 1864:—

“ 296. The paper declaring the customs and containing the code of rules for the future management of the manor (called now the administration paper) is always considered a most important document. Indeed, if fairly and properly drawn up, it is all-important; but this can so seldom be done that its value has been much exaggerated, and I fear that many officers have been in the habit of too rigidly acting upon it. It has often been merely an elaborate Persian document in the best office language, drawn up by some learned Hindústání munshí, and copied for every manor of the pargana. Some few points have been ascertained in each case; but in general the villagers did not know their own customs very well; and when they put their seals to the paper, no doubt they thought it very grand, though they did not know what it was about, as they could little understand the language. The rules are of two sorts. One, the rules laid down by Government on points on which the whole pargana have the same custom; and second, by the special customs of the particular manor. These together take up a great number of pages, and the villagers are confused by the long code of rules, and merely say ‘yes, yes,’ and put their seals to the paper, hoping it is nothing very dreadful.

“ 297. To abviate this I have drawn up two codes. One, the general code as above, which is prepared carefully once for all, in great detail and put on record: a copy of this is furnished to each village. The second contains the special customs; and to prevent these being mere copies, they are not drawn up as rules, but recorded as series of answers to a set of simple printed questions. These answers must be recorded in the simplest language by the village accountant, or steward of the manor; and by this means they have been better understood, and are, consequently, more to be depended upon.

“ 298. In the questions on the customs of inheritance a separate column is allowed for the answers of each caste, as they often have very different customs. The Gukkhurs will give no rights to a son of a low caste concubine, while the Juts will almost give rights to a stepson: this latter arrangement is consequently a great advantage. The whole document now, instead of being an alarming record of 20 pages, only covers three sides of a sheet of paper; and as this has been considered a great improvement by superior authority, I submit a translated copy of one of them as Appendix M of this Report.”

§ 2. *Tabular statement of customs as to succession and widow's right.*—The Appendix (M) referred to is this :—

*Rules for Inheritance and other Rights in Land.*

Questions in regard to title to possession in succession.	DIVISION OF PROPERTY HOW DETERMINED.			
	By the Junjuahs.	Khatris.	Brahmans.	Awans.
When will a daughter or son-in-law receive a share ?	Only by dowry on marriage of the daughter during life-time of father.	As the Junjuahs.	As the Junjuahs.	As the Junjuahs.
How is division of property to be effected in cases of more than one son by different marriages ?	The sons will all take equal shares.	Do.	Do.	Do.
If one of the widows has no son, will she get a share or not ?	She will get an equal share, provided she does not re-marry or go wrong.	Do.	Do.	Do.
What share will the son of a wife of the lower caste receive ?	Only one-fourth of the share of the others.	Do.	No share.	Equal share.
What is to be considered a lower caste ?	All, except the wife of the husband's caste.	Do.	As the Junjuahs.	These treat wives of every caste alike.
If the sharer has no son, what are the shares of the daughter, widow and brother ?	Widow to retain possession during her life or until she re-marries, &c., but after her demise the land to be divided among the husband's brethren. Daughter has no claim whatever.	Do.	Do.	As the Junjuahs.
If there are no brothers, will paternal uncles and their children inherit, or the daughter ?	The uncles will inherit, not the daughter.	Do.	Do.	Do.
Can a widow transfer her share ?	No ... ...	Do.	Do.	Do.
If she cannot transfer, how is the payment of the balance of revenue to be arranged for ?	The brothers of the deceased will arrange for that, and take the land.	Do.	Do.	Do.
Is a stepson entitled to any share ?	No; but has a claim to maintenance until he comes of age.	Do.	Do.	Do.

*Rules for Inheritance and other Rights in Land*—concluded.

Questions in regard to title to possession in succession.	DIVISION OF PROPERTY HOW DETERMINED.			
	By the Junjuahs.	Khatris.	Brahmans.	Awāns.
If a co-parcenar during his life time divide his possession among his children, retaining a share himself and living with one of his sons, on his death is the share to come to that son, or is it to be equally divided amongst the whole ?	If all the sons share expenses of the funeral equally, they divide the father's share equally; otherwise the son who pays the expense alone takes the share.	As the Junjuahs; but they can only be called upon to share in expenses to the extent of Rs. 5.	As the Junjuahs, as the Khatris, but to the extent of Rs. 20.	As the Junjuahs.

§ 3. *Ghar jawái*.—Jhelum being the next district to Gujrát, it is noticeable that a custom, which is evidently that usually known as ‘ghar jawái,’ is very similarly stated. In paragraph 255 of this Report, referring to cases where a son-in-law has held the land for his wife’s father or the widow, one or both of the wives’ parents having died with no male children, Mr. Brandreth says :—

“ After the widow dies the brothers claim. The son-in-law had held as a son almost, and had often considered himself quite secure; but it has been settled in all cases by the unanimous opinion of the country that he has no claim, unless the father himself had publicly given it (*sic*) him and put him in possession. A deed of gift has also been generally considered necessary. The widow has always been decided to have no power of gift whatever.”

## SECTION X.

### THE SHAHPUR DISTRICT.

IN the Shahpur Settlement, effected by Mr. Gore Ouseley and Captain (now Lieutenant-Colonel) Davies, the local customs were recorded in the village administration papers. The principal rules are recited in paragraphs 229 to 309 of the Settlement Report, 1866, under the headings Division of common lands, Transfers, Inheritance, Tenants with rights of occupancy, Tenants-at-will, Wells, tanks, &c., Trees, Items of miscellaneous income, Village expenses, Village servants, Grazing rules, Alluvion and diluvion. My extracts are confined to those matters which are treated in this series of papers; but I have included paragraph 299, § 1 below, on account of its interest as bearing on the nature of proprietary right.

#### *“§ 1. Division of common lands.*

“299. The rule for the division of the village common lands in villages held on the bhayachara tenure (in which division can be claimed) is everywhere the same, that each co-parcenar shall receive a share proportionate to his interest in the estate, as represented by the quota of revenue recorded against his name in the khewut. But where land is held jointly by one or more sharers, the uncultivated portion of such separate holding is divisible in accordance with the ancestral shares of the parties. In zamíndári and pattídári estates the division would, of course, be according to law, and not custom. In the above general rule, the clause in parenthesis was necessary, because in the ‘Thull’ and ‘Mohar,’ the only lands held in commonalty are those reserved for grazing, and these the communities of those parts have agreed not to divide; and in the Salt Range the hill slopes (the only areas included in the same category) have been specially reserved as the property of the State. Under this heading are also given the terms as to payment on which parties may sink wells in, and cultivate portions of, the village shamilát, the proceeds being rateably divided among the whole proprietary body.

#### *“§ 2. Transfer and Inheritance.*

“300. The rules under these two headings can best be given together. The general rule in regard to inheritance is that known as ‘pagvand,’ where all the sons of the one father inherit alike. The contrary custom of ‘chúndavand,’ or equal division between the issue of each wife, is the exception, and is chiefly found in villages held by Sayads, Kureshís and Patháns—tribes in which polygamy is more commonly

practised. Another generally recognised rule is that female children shall only obtain a share in the inheritance when the father, by *the execution of a formal deed during his life-time*, has transferred to them a specific portion. Illegitimate children and the issue of former husbands (*pichlag*) are altogether excluded. In default of male issue widows may inherit on a life-tenure only; but they have no power to alienate any portion of the property by sale, gift, or mortgage, unless with the concurrence of the next-of-kin. In some few villages provision has been made for the case when the next heirs refuse to contribute towards such necessary expenses as the marriage of the deceased shareholder's daughters: in such cases the widow is allowed to raise money by selling or mortgaging the whole, or any portion, of the estate. During their life-time proprietors can, of course subject to the exercise of the right of pre-emption on the part of the remainder of the co-parcenary, dispose of their lands as they will. The only exceptions to the above rules as they affect widows are in estates owned by Sayads, Kureshís, Hindús, and in some parts Khokhurs, where, owing to widows not being allowed to re-marry, all restrictions on their power to dispose of the property of their deceased husbands have been removed."—*Settlement Report, 1866.*

**§ 3. Exclusion of females from inheritance.**—In the Report above quoted a distinction is made between three classes of suits connected with title to land. These are (1) suits by parties out of possession for whole villages or particular plots; (2) suits by parties in possession to obtain re-allotment in accordance with ancestral shares; (3) claims by collaterals against widows, daughters, or sons-in-law of a deceased sharer, either to obtain possession of the inheritance or to restrain parties in possession from alienating the same. With the two first classes of suits we are not here concerned. As regards the third class, in paragraph 276 of the Settlement Report these observations occur:

"276. The third description of cases were more embarrassing, because, while throughout the district, and more particularly among the Awáns, the feeling against landed property passing through females is very strong, the dictates of natural justice disincline from passing orders the effect of which will be suddenly to deprive a man of land which he has cultivated for many years, and has learned to look upon as his own. The voice of the country, however, was too strong to be directly opposed; and it was only by means of arbitration that, on the death of the widow, any portion of her deceased husband's inheritance could be reserved to her son-in-law. Attempts by the widow during her life-time to effect the same object by means of a formal gift or fictitious sale of the property to the son-in-law were invariably disallowed as opposed to local custom."

The statement regarding the Awáns, and that made in paragraph 300 (above quoted) as to the Sayads and Kareshís, called forth the following remarks from Sir Donald McLeod, then Lieutenant-Governor :

" 19. The fact, incidentally mentioned (paragraph 276 of Report), that the Awáns, who are believed to be of purely Muhammadan descent, have an especially strong objection to landed property being inherited through females, appears somewhat remarkable, as the sentiment is usually supposed to emanate from the tenets of Hindú law alone. But I have observed the same amongst the pure Patháns of the Jullundur Doáb ; and it seems probable that in all countries which have in times past been continuously under Hindú rule, or the rule of Muhammadans sprung from Hindús, who invariably cling to their ancestral usages, this feeling is prevalent. Another fact of a somewhat analogous character is mentioned in paragraph 300, which is in like manner remarkable, viz., that the usage of 'chúndavand,' by which the offspring of each wife separately inherits an equal share of the ancestral property with the offspring of each other wife, which usage is commonly considered to appertain exclusively to a section of Hindús and Sikhs only, is exceptionally prevalent amongst Sayads, Kureshíes, and Patháns, the last two of whom at least may be presumed to be of purely Muhammadan descent."

The objection to landed property passing through females means that succession is regulated according to the agnatic group.

## SECTION XI.

### THE RÁWALPINDI DISTRICT.

THE Rawalpindi Settlement Report, 1864, by Major (now Colonel) J. E. Cracroft, contains much information on the fiscal and political history of the district prior to annexation, and describes in full detail its chief tribes. The relations of landlord and tenant are discussed at length; but this is a complicated and extensive subject which I have excluded from the present series of papers. For the rest the customs regarding inheritance, and generally on points similar to those enumerated at the head of the last preceding paper, were recorded in this district also as part of the village administration paper which is expressly described in the Report itself as an agreement or *ikrárnama*. No comprehensive abstract, like that drawn up by Lieutenant-Colonel Davies in Shahpur, is supplied; the extracts I am able to append are, therefore, scanty. With reference to the divergence from the Muhammadan law therein exhibited, it is interesting to note that, according to the Census Returns of 1868, out of a total population of 2,197,387, no less than 1,898,529 were Muhammadans.

§ 1. *Dower.—Gift.*—Part of the plan of the Settlement Report comprises a discussion of the various classes of civil claims that were decided during the operations, and from this the following is a passage:—

“ 297. In claims by gift and by purchase the point to prove was naturally the fact of gift or of purchase, or transfer; it was supported or not, as the case might be, by possession. Such cases, if unsupported by possession, were rarely, if ever, admitted. But few cases were put in on the plea of dower or marriage, the custom of the country being adverse to girls inheriting; but in certain families it was customary to intermarry, and to give the lady a dower in land: in no case could she inherit if she married out of the family. Cases of dower in land often resolved themselves into cases of gift; if so, and the gift was proved or supported by possession, it was considered valid; otherwise the dower was held to be contrary to local usage, and the collateral relatives succeeded to the property.”

Here we see precisely the same tendencies at work that Mr. J. Wilson had so well explained in the case of Gurgaon. The land must not leave the *got*, is the wider and

more general principle, from which the rule that land may be given to a daughter marrying within the family is a deduction. The confusion between dower, gift, and inheritance, and the resort to gift for the purpose of prescribing a particular succession, will be noted. In history and in tribal composition the Gurgaon and Ráwalpindi Districts are by no means alike; and this, the tribal constitution of society nevertheless existing in both instances, renders the coincidence of custom the more interesting.

*§ 2. The law of inheritance.*—The paragraph below, though brief, is very much to the purpose :—

“ 372. The laws of inheritance of either Hindús or Muhammadans are not strictly followed out in this district, and local usage is not uniform: the custom and rule guiding these cases have been entered in the *Elqua Wajib-ul-urz*, or agreement, in detail. The most general exception to Muhammadan law is that daughters cannot inherit landed property and houses so long as there are male relatives on the father’s side. Local custom varies as to the degree of propinquity in comparison of which the daughter has a preferential claim; but the general custom is that, so long as there are any male relatives on the father’s side the daughters cannot inherit; some tribes have given two generations, and others five generations, as the limit. Widows are allowed a life-interest on their husbands’ landed property, should there be no male issue. Should the latter exist the widow is allowed maintenance, but no share. Should she re-marry the property reverts to the relatives of her deceased husband. Some classes make an exception prejudicial to the offspring of marriages in which the mother is of a caste or class with whom the husband’s family is prohibited, by the custom of the clan, from contracting marriage and so forth.”

## SECTION XII.

### THE HAZÁRA DISTRICT.

As the Hazára District was settled during the years 1868-74, Mr. Prinsep's system of compiling Tribal Codes was already in force. Captain (now Major) E. G. Wace, the Settlement Officer, has abstracted the records in his Report, from Chapter VIII of which the paragraphs in this Section are taken.

#### § 1. *Manner of investigation.*

“ 4. The Codes, with one exception (that of the Tarkhelis, the rough draft of which was first prepared in 1869), are all drawn up on a uniform plan. They are not framed on a system of questions and answers ; but the following heads were fixed upon as sufficiently covering the subjects to be dealt with :—

- (1) the division of paternal property among sons ;
- (2) the rights of daughters ;
- (3) the rights of widows, and of daughters whose fathers die before they are married ;
- (4) adoption ;
- (5) gifts and wills ;
- (6) marriage and divorce ;

and each tribe was required to give an account of its customs under each of the above heads. The customs were of course, in the first instance, necessarily elicited by examination of the leading men. The answers thus obtained were checked by reference to the village genealogical trees, which show to a large extent how property has devolved hitherto. The substance of the answers was then summarised under each head in as definite language as the admitted custom allowed of, and again orally attested before being finally recorded.”

§ 2. *Marriage.*—The only form of marriage recognised as legal is the *nikáh*. Infant marriages are unusual. The men usually marry between the ages of 16 and 18, and the women between 12 and 16.

“ 8. Great stress is laid on the betrothal ceremonies. The two most important points in them are the ‘*thál*’ and the ‘*ijáb-kabul*,’ or ‘*shara-jawáb*.’ When the bridegroom’s party have arrived at the bride’s house and have been feasted, the barber puts down between the parties a large brass platter called a ‘*thál*.’ Into this the bridegroom puts what money and jewels he has brought for his bride. These are then carried inside to the bride and her mother ; and the barber, returning with the empty ‘*thál*,’ demands more. Then follows a demoralising scene of protests from the bridegroom’s party and demands from the bride’s father and his party ; and after the bridegroom and his friends (who also

contribute) have been sufficiently squeezed, the '*thál*' is again taken inside. The majority of the contributions are retained and a few returned. The scene is practically one in which the bride's father sells her for as high a price as he can obtain. The theory is that the money is given to the bride for jewels; but the almost universal practice is that her father retains it. The sum thus paid varies from Rs. 50 and 100 among the mass of the people to much larger sums among those better circumstanced than the mass. '*Sharbat*' is then brought for the bridegroom's party; and, until late years, this concluded the betrothal. But of late years, principally since annexation, a custom, commonly spoken of as '*ijáb-kabul*', or '*sharz-jawáb*', has arisen, by which, after the sharbat-drinking, the father of the bridegroom and the father of the bride successively declare the betrothal in a loud voice. The declaration is repeated three times. Great stress is laid on this part of the proceedings; and though it is admitted that it does not constitute marriage (*nikáh*), it is commonly spoken of as such. It is almost universally observed, except among the Turks, Dílazáks, and Jádúns. Apparently, it grew up out of a desire to make the repudiation of a betrothal impossible: the weight attached to it is commonly justified by this reason. It is now not uncommon for the complete *nikáh* ceremony to be performed on these occasions, and the tendency is more and more in this direction. As, however, the bride is not taken away by her betrothed, a second *nikáh* ceremony is gone through when the bridegroom returns a few months afterwards to take her home. It is a curious question for decision whether such a ceremony as the first of these two *nikáhs* constitutes a lawful marriage. I believe that the weight of the best authorities will be found on the negative side of this question, for the reason that it is not followed by cohabitation, and that neither party intends that cohabitation should follow until the second *nikáh* has been performed.

"9. The marriage ceremony (*nikáh*) is carried out by the people to the best of their ability in strict accordance with the requirements of their religious law. The dower (*mahar*) is fixed at the ceremony with great publicity prior to the reading of the *nikáh*. The amounts fixed vary much, but are generally over Rs. 50 or under Rs. 100. The dower is rarely paid; but its payment seldom remains an open question. The Statements of Tribal Customs thus describe the customary way of treating the wife's dower. The husband gives the bride a present on her arrival at home, jewels or a milch animal. She is then, after a few days, persuaded to forego the rest, as she has at that time every motive to do. The settlement of the question is commonly witnessed by a few elders or relations invited to the house for the purpose. At present it is the exception for the husband to give his wife any land in payment of her dower. In the few cases in which land is so given it is treated as her special property, and she has complete control over it—to keep, give, transfer, or will away, as she likes."

Although this is in accordance with the compilations, Major Wace, the Settlement Officer, goes on to say:—

"My enquiries lead me to believe that very commonly, especially among the Swáthis, a wife's claims in respect of her dower are totally

neglected, no thought being given to the matter after giving her the small present she necessarily receives on her first arrival in her husband's house. When a man marries a wife of lower origin than himself, he usually promises her what is called the '*mahar misl*,' that is to say, not the dower ordinarily fixed for women of his own tribe, but the dower current in the bride's own family. The Utmánzais, both men and women, regard the cash payment of a dower as a reproach. The Jádúns have a curious custom of bringing the bride to the bridegroom's house and performing the marriage ceremony there, contrary to the universal custom of the rest of the population, under which the marriage ceremony takes place at the bride's home."

In the next paragraph Major Wace notices that the women who are the guests and bystanders pelt the bridegroom's procession with abuse—an evident trace of marriage by capture.

#### "§ 3. *Divorce.*

"11. Divorces, though admitted to be lawful, are not customary, except, perhaps, among the Swáthis. Among the Utmánzais, to say that a man belongs to a *tiláki ghar* (a house where a divorce took place) is a term of abuse and reproach.

#### "§ 4. *Gifts and wills.*

"12. Neither gifts nor wills are customary. Wills are absolutely unknown, except in the shape of petty dying bequests, principally of movable property. Such bequests are opposed to public feeling, as calculated to cause injustice to the ordinary heirs; but, if confined to petty items, are commonly respected out of regard for the deceased's memory. Gifts of small plots of land to daughters or others are occasionally made. But the practice is infrequent, and I am inclined to think it was rarer still prior to our rule.

#### "§ 5. *Adoption.*

"13. Adoption is unknown among the Muhammadan population of the district. Two or three cases have occurred lately among the Turíns of the Haripur plain; but they are quite exceptional, and stand by themselves. Adoptions occasionally take place among the Híndús.

#### "§ 6. *Rights of daughters and widows.*

"14. Daughters never inherit land.\* In default of male issue the estate goes to the nearest male collaterals. Very occasionally a small piece of land is given by a father to his daughter on the occasion of her marriage (*jahez* or *dáj*). Of such land the daughter has complete and sole control to keep, give, transfer, or will away at her pleasure. A widow has a life-

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\* One important exception to this rule has lately occurred. Khuda Bakhsh, the owner of Baheri Labán Bándi, a large estate near Haripur, died in 1872, leaving no issue, except one daughter. She is married to her first cousin. She has succeeded her father in the ownership of the estate without dispute.—E. G. W.

interest in her deceased husband's estates ; but not ordinarily to a greater extent than is necessary for her personal support. Thus, the sons can divide the estate on their father's death, giving their mother only a share equal to their own. In the case of large estates only so much as is necessary for her support would be given to her. If the father divided his estate among his sons during his life-time, keeping a share for himself, the widow will not unfrequently retain that share after his death, or the whole land may be divided at the father's death, and the sons support their widowed mother. The particular course taken in each case probably depends very much on the circumstances of individual families. But in the event of a dispute coming before our courts, custom would be found clearly to give the widow the first claim on the estate to the extent necessary for her personal support. The widow has in no case more than a life-interest : she cannot make a gift of, or permanently transfer, any portion of it. She may temporarily transfer her interest in the land in order to meet pressing and necessary claims. It is not clear how far the consent of the nearest heirs is necessary to such transfers. The claims of an unmarried daughter stand on the same footing as those of a widow. The widow or one of the brothers commonly takes charge of her, receiving a small consideration on that account in the division of the estate. The Swáthís and Kágán Sayads do not ordinarily allow a widow or unmarried orphan daughter to retain any land, but provide for their support by direct contributious.

#### *“ § 7. Inheritance in the male line.*

“ 15. It will have been seen from the above remarks that the inheritance of land is ordinarily confined strictly to the male line.

“ 16. Where a man dies leaving no male issue, the broad rule is that his land goes to his surviving brothers, or to their male issue, in the ratio of the shares of the ancestral estate. To follow out this part of the subject further would introduce us to a region where there is wide room for dispute, and of which the only correct account would at present be that, owing to the disturbed character of the times which preceded our rule, to the small value that land then possessed, and to the large area of culturable land then waste, the established rule of inheritance in the absence of male issue cannot be stated more exactly than I have above given it. We must leave the numerous minor intricacies that become the subject of dispute on the failure of direct male issue to be decided as they arise under the settled administration which alone makes such contentions possible or worth disputing.

“ 17. In the presence of direct male issue, the subject divides itself into two branches. It is common for a father to divide his estate among his sons when they arrive at manhood and are married ; or he may not do this, and may leave the division to be made at his death according to the acknowledged rules of inheritance.”

#### *“ § 8. Partition by the father.*

“ 18. In the former event the division of an estate by a father during his life-time, the authority of the father to divide as he likes, is generally admitted. For instance, a father may give more to one son and less to another. If by the custom of the tribe property ordinarily devolves *per*.

*capita*, the father in his life-time may divide it *per stirpes* or *vice versa*. If the custom excludes sons of low-born wives from shares, or gives them only small shares, in the presence of other sons born of a wife of good blood, the father, in a division of his estate made during his life-time, may give all the sons equal shares. This power of the father to divide his land among his sons as he likes during his life-time is a custom of great importance. According to the statements recorded in the Tribal Codes under review, a father's authority in this respect is unlimited; but I think these statements are to be accepted with some reserve. As a matter of fact, family partitions of land made by a father during his life-time vary little in their details from the partition which tribal custom would enforce after his death. To quote the words of the only Punjab Civil Code on a cognate subject, 'it is probable that capricious alienations in favour of one heir to the prejudice of the rest \* \* \* \* will not be approved of by public opinion in any locality.' If, therefore, a son were to bring a case into court, alleging that partition made by his father was widely different from what is sanctioned by the ordinary custom of the tribe, that it was intrinsically unjust and merely capricious, I think he should be heard. He should be allowed to show, if he could, that, as a matter of custom, the partitions ordinarily made by fathers during their life-time do not widely differ from what they would be if made after their death; and I hope that the bare statement in Tribal Codes, to the effect that the father's authority is unlimited, will not be held to sanction a wider exercise of this authority than has, as a matter of fact, been customary. All that the statement does is to throw on a son objecting to a partition made by his father the onus of justifying his objection. A partition of the family land made by a father in his life-time, and completed and acted on before his death, cannot be afterwards repudiated. But it is necessary to its validity that it should be completed and acted on before the father's death, and a partition merely *of the produce* of the family estate on stated shares during the lifetime of the father does not avail to govern the partition of the lands after the father's death. In such partitions a father ordinarily retains to himself a share in the estates for his own support. This is greater or less as he pleases; but it is commonly of the same amount as each son's share. These partitions are not ordinarily made until there is no prospect of the birth of more children to the father; it is consequently not very clear what may be done if children are born to him after the partition. But it is probable that in the first instance they would be provided for out of the share retained by the father. At the father's death the widow's claim for support would first be satisfied out of this share, but in the event of there being no widow, or if other arrangements were made for her support, the father's share is then divided among the direct male issue according to the tribal custom. It is not uncommon for a father at his death to give his personal share to one of his sons, for instance, the son with whom he lived during the later years of his life. Such a bequest is not opposed, provided that the son so benefited bears the whole expenses of his father's funeral, and also takes over all the father's debts. If he declines to bear the whole of these charges, the father's share is divided among all the sons equally, or in the ratio of the previous division of the family estate, the expenses of his funeral and debts being similarly divided. If

any of the sons refuse to share in these charges, they are excluded from participation in the father's land. Absent sons are also necessarily for the time excluded; but they are generally re-admitted on return home if they pay up their share of the charges."

*"§ 9. Division among the sons on the death of the father."*

"19. I proceed to describe the customs of inheritance which govern the cases in which a father dies without dividing his estate. In the presence of sons, collateral heirs are in every case excluded from inheriting any portion of the father's estate. Even in a tribe whose custom ordinarily gives only a small plot of land to the son of a wife of base blood, such a son, if his father's only son, would take the whole estate to the exclusion of collaterals.

"20. A not unfrequent incident in the customs of the Upper Punjab is a rule which draws a distinction between the sons by wives of the same tribe, or of a tribe of equal blood, and the sons of wives of inferior origin.

"21. In the following tribes and families of Hazára no such distinction prevails, the sons of all wives being treated alike, *viz.*—

Mishwánis.	Kagán Sayads.
Karráls.	Malliárs.
Gujars.	Hindús.
Awáns.	Members of the menial classes who hold land.
Jádúns.	
Swáthis.	

In all these cases a father's estate is divided among his sons after his death *per capita*, each son taking an equal share. In the following tribes distinctions are drawn between the male issue of wives of the same or equal blood and those of wives of inferior blood:—

Tarkhelís.	{	Among whom the sons inherit <i>per capita</i> , pagvand.
Turíns.		
Dilazáks.		
Dhúndzs.		
Tanaolís.		
Utmánzais.		
Turks.	{	Among whom the sons inherit <i>per stirpes</i> , chundavand.
Sayads, other than the		
Kagán Sayads.		

It will be useful to give a short account of the distinctions referred to.

"22. The Tarkhelís only give one or two ploughs of land to the sons of a wife not of Pathán blood. They class all blood as base (*kámín*), which is not Pathán. The sons by Pathán wives inherit equally *per capita*.

"23. The Turíns similarly put off with a small plot of land the sons by a 'kamín' wife in the presence of sons of purer blood; they include in the term 'kamín' the menial and artizan classes, *e.g.*, weavers, leather-workers, carpenters, smiths, &c. If there is issue by two wives, of whom one wife is of Turín or Pathán blood, or the daughter of a chief or leading man in another tribe, and the other wife comes of an ordinary family in any of the other agricultural races (Hindki), the share

taken by each son of the Hindki wife will only be half the size of that taken by each son of the other wife. With these exceptions the division of the heritage will be *per capita*.

" 24. Among the Dilázáks, Dhéndzs, and Tanaolíz, the sons all inherit in equal share *per capita*, subject to the following exception. Where a father has left issue by two wives, of whom one wife was of his own tribe, or of any other 'wáris' (proprietary) tribe, and the other wife was of a tribe who are not owners of the soil, the share taken by each son of the latter wife will only be half the size of that taken by each son of the pure 'wáris' blood. In the Tanaolí tribe the sons of such a wife not uncommonly receive only small allotments (*gazaras*) instead of any defined share.

" 25. Among the Utmánzais the sons inherit *per stirpes*. If the several wives by whom male issue survives were all of Pathán blood, each *stirps* takes an equal share. If one of the wives was of Hindki blood, her *stirps* takes only half the share taken by each Pathán *stirps*. The Utmánzai class as Hindkis all who are not Patháns, not excepting Tanaolís.

" 26. Among the Turks the sons also inherit *per stirpes*. It is admitted that a *stirps* by a wife whose father was a chief or leading man in adjacent 'wáris' tribes takes an equal share with the *stirps* of a Turk wife ; but whether the *stirps* of a wife of other alien blood would also be entitled to a full share in the presence of a *stirps* of pure blood is disputed.

" 27. The Sayads of the district, except those of Kágán, class as pure blood Sayad families, Patháns, the Tanaolí chiefs, families, and the families of leading men of other tribes. If there is male issue by two wives, one of pure blood and one of inferior blood, the *stirps* of the latter only takes half the share taken by the *stirps* of the former.

" 28. In every case in which the division is *per stirpes*, the sons of each *stirps* inherit equally among themselves.

\* \* \* \* \*

#### *" § 10. Recognition of chiefship in family rules of succession.*

" 31. In the Turkhelí chiefs' family a certain portion of the property is known as *dastar* and a certain portion as *wérasat*. The former devolves integrally to his successor in the chiefship, ordinarily the eldest son ; the latter devolves according to the ordinary rules of inheritance.

" 32. Similarly, in the family of the Gujar Mokadams of Kot-Najibulla, the old jágir villages devolve integrally with the jágir and chiefship, the rest of the property going according to the ordinary rules of inheritance.

" 33. There is some reason to believe that in the families of the Karrál Sardárs of Dewal-Monal and of Dubran the chiefs take a larger share in the inheritance as compared with the other brothers ; but the question is not likely to be cleared up until it comes up for judicial decision.

" 34. The same remark applies to the Tanaolí jágirdár of Bír and Shingi, and to the Bamba Chief of Boí.

“ 35. There is a strong presumption in favour of the existence of a special custom in the family of the Swáthi chief of Garhi Habíbulla. It appears that in this family for three generations past the successor to the chiefship has dealt as he chose with the whole paternal estate, giving to his brothers such portions as he thought fit, and keeping the greater part of the property himself. The collaterals of the chief, known as Khán-khails, treat their property in the same manner as the rest of the Swáthi tribe, with one exception, *viz.*, they state that the sons of wives of alien tribes (not Swáthi) are not entitled to more than small subsistence grants in the presence of sons by another wife of Swáthi blood.

“ 36. In the Statement of Tribal Customs of the Turk family it is recorded that in the families of the two old Rájas (of whom the representatives now are Rájas Haiyát and Fatteh Khan), the chattels, cattle or houses, and lands cultivated by the Rájas themselves, devolve according to the ordinary custom of the tribe, but that the lands under tenants go in entirety to the eldest son.

“ 37. The estate of the Agror chief devolves in entirety with the Agror chiefship ; the other heirs have no claim to any share in it.

“ 38. The holdings of sub-proprietors in the Agror Valley, excepting those who own charitable serís (*serí-khairát*), lapse to the chief on the failure of direct male issue.

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### “ § 11. *Sale and pre-emption.*

“ 40. No special customs relating to pre-emption have been recorded of such importance as to call for notice here. The right of pre-emption does not extend to mortgages, or other temporary transfers of property.

“ 41. Sales of land are rare and, except under special circumstances, are regarded as dishonourable. The terms in local use to describe a sale of land are *baibag bai katai* (sale complete), *tooirawan*.\*

### “ § 12. *Mortgage.*

“ 42. The mortgages are ordinarily usufructuary ; that is to say, the mortgagee is placed in possession of the land to the full extent of the mortgagor's interest ; the profits of the mortgaged property are taken in exchange for interest on the debt, and the mortgage is released only when the principal is repaid. There is no prejudice against mortgaging lands, such as there is against selling land. A practice of making conditional mortgages (*bai-bil-wafá*), under which the transfer becomes final, if not redeemed within a stated period, is now springing up. The local terms by which a mortgage is described are *gahna*, *rahn*, *bhotá* (among the Tarkhelís), and *zurkhari* ‘(bought with gold)’. It is not

\* The derivation of this term is not so clear as that of the others. It is a Pashtu term of late origin. It was first used in the Swáthi tracts. The first half of the word (*tor*) “means a claim,” and is also occasionally used by the Swáthis to describe the proprietary right; the last half of the word, I believe, conveys the idea of “destroyed or made null,” being a Pushtu corruption of the Persian word *wairán*. This is the most probable explanation of the word I have heard. It gives a meaning to it identical with the Hindki term “*ladúwa*” (free of all claims); the Tanaolís also call a sale “*Milki*.”—Major Wace.

unfrequently asserted in our courts by interested mortgagees that the term *zarkharid* means a sale ; but this is not the case. It was never applied to sale, but only to mortgages. Its use does not date back beyond Sikh rule ; but persons who now buy or mortgage land are fully alive to the necessity of avoiding the use of ambiguous terms. In former times, especially anterior to Sikh rule, sales of land without reservation of any right to redeem were rare. In the occasional instances in which they occurred, special terms (as noted in the previous paragraph) were applied to them, which terms expressly indicated that the seller had foregone the customary right to redeem the land on repayment of the purchase-money.

" 43. A curious custom relating to mortgages exists in the large village of Tarbela, on the banks of the Indus, in the Haripur tahsil. There are a great number of mortgages in this village, especially in its irrigated lands, which are extremely valuable : the average size of the mortgages in these irrigated lands is one or two kanáls, or even less. Not a few of them date from a time anterior to Sikh rule : these are regarded as past redemption. Many date from Sikh rule. If the mortgagor desire to release such a mortgage and there is a dispute as to the amount of the mortgage-money, the mortgagee is allowed to swear on the Kurán (or Granth, if he is a Hindú) what the true mortgage-money is. If he swears to a sum not exceeding Rs. 50 per kanál of irrigated land, or Rs. 25 per kanál of unirrigated land, the mortgagor accepts the oath and pays accordingly. If the mortgagee swears a higher sum than this to be due, the mortgagor must pay it, unless he is himself willing to swear the other's oath false, in which event he pays the maximum before named. This custom is also applied to mortgages of a later date than Sikh rule, in cases in which the two parties cannot agree as to the sum due. This custom arose out of the circumstances under which these mortgages are contracted. A man mortgages a valuable piece of land for a small debt. A few months afterwards, if he wants to borrow more money, he does not borrow it by pledging more land ; but applies to the person to whom he has already mortgaged some land. The mortgagee can, of course, refuse to give a new loan ; but as the land is very valuable, he is generally willing to give a new loan rather than incur the risk of its being released and mortgaged to some one else. In this way loan after loan is borrowed on the same land till it is frequently impossible to say what the debt due on the land really amounts to : and, of course, each side is ready to take advantage of all doubts. The custom above described is well suited to decide the disputes which arise under such a state of affairs. A mortgagor intending to release a mortgage in Tarbela can only do so in the month of Mágh (12th January to 9th February), when the kharif ploughings commence ; and he must give notice of his intention before the month commences."

## SECTION XIII.

### PESHAWAR DISTRICT.

IN this and the two following districts the Settlements are quite recent. Tribal Codes have been drawn up; and the Officers in charge have stated the substance of them in their Reports. The quotations are from the Settlement Report (1876) by Captain E. G. G. Hastings—

#### “ § 1. *Marriage.*

“ 314. The marriages of the Afgháns of the district are usually determined by considerations of family convenience: it is very common for a man to marry his first cousin, and his deceased brother's wife is, by custom and opinion, his right (*hak*).

“ Marriages, always preceded by betrothals, are generally conducted in the case of a virgin (*peghla*) in the following manner. A dom-mirási acquainted with the affairs of both parties is sent as a dalál, or go-between; he makes the overtures to the bride's father, and ascertains what will have to be paid. Overtures from a Dilazak, or other person not recognised as an Afghán, would not be entertained, although Afgháns have no objection to take the daughters of Hindkis as their wives. It is also usual to object to overtures for a younger daughter if there should still be an elder unmarried sister. The amount payable is fixed according to the position and means of the suitor; it includes a sum of money for expenses, another for jewels. This is allowed for in the dower (*mahar*) fixed, and is the only portion of the dower *paid* previous to marriage. A certain quantity of rice, shakar, and ghlí is also included in the demand. There is often a good deal of haggling about the amount demanded. As soon as the money is paid, betrothal (*kojhdan*) is made, and may or may not be followed immediately by the marriage ceremony (*wadah*). The ceremony is generally performed in the month of Shiwal, seldom in the month of Moharram, which is considered an unlucky one for marriages. The ceremony is performed by the Imám, after ascertaining from the relations, who have been witnesses to the *kabul-il-jab*, or acknowledgment of acceptance, by the girl of her suitor. The amount of dower (*mahar*) varies very much; it is usually settled at the same amount as has previously been fixed for other members of the family. This is known as *mahar-i-misal*. It is common for the bride, if satisfied with her husband, to forego her right to dower; and it is always done if the husband at any time should become dangerously ill after marriage. The bride's own portion, received from her father and mother, is called *dhadzor parínaí*. The marriage festivities are called *shadí*, and consist of a wedding feast, called in Pushtu *kwara*, and the procession, or *janj*, which accompanies the bride-groom (*chunghol*) to the bride's (*changhala*) house. The journey of the procession is varied by discharging guns and blunderbusses, and music

on the pipes (*surna*) and drums (*dolkai* or *damama*). The eves of Friday or Monday are generally the days chosen by the husband for taking away his wife. Sometimes where only betrothal (*kojhdan*) has been made, the religious service of *nikah* is performed on the night of the arrival of the *janj*. The expenses known as *haktora*, payable to the khán or mallik of the kandi in which the bride resides, include the fees to the village servants. They are paid by the bridegroom before he can take away his bride, and on his arrival with the *janj*. They usually amount to Rs. 10, and include payment to the village artizans, *imám* and *hak pagri* for the mallik. The procession, or *janj*, again returns with the husband and bride to his village, where farther feasting is carried on for another night, after which the husband for the first time is at leisure to see his bride (*nawai*), and ascertain if she is all that has been described. The expenses fall on the bridegroom. To help him it is the custom for his friends to contribute sums (*nendrá*), an equivalent for which he is expected to pay at their weddings. The cheapest marriage with a virgin (*peghla*) would probably not cost less than Rs. 100; an average one about Rs. 250, and for an arbáb, khán, or leading man, the expenses might reach as much as Rs. 1,000, 2,000, and 3,000.

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### *“ § 2. Devolution of property : method of enquiry.*

“ 571. The customs regarding the devolution of property were ascertained by a system of questions and answers under the following heads :—

- I.—Rights of a widow whose husband has died childless.
- II.—Division of property in land amongst sons on decease of the owner.
- III.—Rights of daughters and their children to succeed.
- IV.—Power of a proprietor to adopt a son, and rights of an adopted son to the property of the adopter.
- V.—Power of a proprietor in the matter of transferring his property.

“ 572. The customs were recorded in 1870 at the commencement of settlement operations. The mode of procedure adopted was, first, to translate the questions into Pushtu and distribute them to the leading men, who were requested to make known the contents to all concerned within their circles. A day was then fixed, and the leading men, with representatives from all villages within the tabsil, assembled, when the questions were again explained by the Superintendent. After this they were given out in public, and the replies, precedents, and exceptions then given recorded by the Extra Assistant Settlement Officer in my presence.

“ 573. The precedents and exceptions given at that time have been since enlarged, compared, and corrected, after a study of the pedigree tables and the separate statement of customs for each village.

“ 574. The statements of tribal customs thus drawn up record what the customs are; precedents in support and exceptions to the customs are also given. New customs wished for the future have been recorded. This would not have been done if the compilation of the customs had been taken up at a later stage, when the definition of what was to be consi-

dered a *custom* and what was necessary to be recorded were laid down by the Financial Commissioner.

" 575. The following statement will show the leading tribes, the tahsils to which they belong, and whether a custom or Muhammadan law prevails under the five headings which include the 15 questions :—

Names of leading tribes.	Tahsil.	CUSTOM OR LAW UNDER HEADINGS.			
		I	II	III	IV
Khallis . . . . .	Peshawar .	Custom .	Questions 2, 4, Law . . .	Custom . . . . .	Law.
Mohmands. . . . .	Ditto .	Ditto .	” 1, 3, 5, Custom ” 1, 2, Law . . .	Ditto . . . . .	Ditto.
Qázis . . . . .	Ditto .	Law . . .	” 1, 2, Law . . . ” 3, 4, 5, Custom	Questions 1, 2, 3, 6, Law. Questions 4, 5, Custom.	Ditto.
Gigianis . . . . .	Doaba .	Custom .	” 2, Law . . . ” 1, 3, 4, 5, Cus- tom.	Custom . . . . .	Ditto
Daudzais . . . . .	Daudzai .	Ditto .	” 1, 2, Law . . . ” 3, 4, 5, Custom	Ditto . . . . .	Ditto.
Khattaks . . . . .	Naushahra .	Ditto .	” 1, 2, Law . . . ” 3, 4, 5, Custom	Ditto . . . . .	Ditto.
Miscellaneous tribes . . . . .	Ditto .	Ditto .	” 1, 2, Law . . . ” 3, 4, 5, Custom	Questions 2, 3, Law. Questions 1, 4, 5, 6, Custom.	Ditto.
Muhammadzais . . . . .	Hashtnagar .	Ditto .	” 1, 2, Law . . . ” 3, 4, 5, Custom	Question 3, Law Questions 1, 2, 4, 5, 6, Custom.	Ditto.
Yusafzais . . . . .	Yusafzai .	Ditto .	Custom . . . . .	Custom . . . . .	Ditto.

" 576. The agricultural population is altogether Muhammadan, except a few Hindú proprietors in the Qashah, and in the villages of Pír Sabáq and ~~K~~und (tahsil Naushahra).

### " § 3.—I.—Rights of widow whose husband has died childless.

" 577. I will now proceed to review the information contained in the Tribal Statements under each heading. The first heading involved two questions :—

" (1) Is the widow entitled to succeed to her husband's property if he died without issue?

" (2) Can the widow divide or dispose of property so acquired?

Question 1.—Succession of widow. " 578. The general custom, supported by precedent, entitles the widow to hold on a life tenure, provided she does not marry again.

" 579. When the village customs were drawn up, some of the proprietors in tappahs Khalsa and Khattak, and all in Qasbah, stated that the Muhammadan law was followed. This in a few cases is supported by precedents; but in many cases was nothing more than a statement of what they wished for the future. It was also modified by the assertion that a widow could not demand a division of her share in the land: she could only claim her proportionate share of the produce. In Daudzai the custom was qualified by saying that the property was to be managed by

the widow's near male relatives, and in Doába by the brother : they were bound to maintain her, but the precedents did not support the statement. In tappah Razzar, Yusafzai sub-division, the proprietor gave as their custom that the widow was only entitled to maintenance.

" 580. There are certain examples in support of these qualifications to Muhammadan law, and many in support of the general custom.

" 581. The general answer to question No. 2 was that the widow, for Question 2.—Power of a *Government balance, fine, or on account of her* widow to dispose of her husband's debts, had the power to transfer by *sale* property. *or mortgage;* but she was bound, first, to give her husband's relations the opportunity of paying. To give or will away is not allowed under any circumstances.

" 582. It was further stated that, if the widow should wish to make a pilgrimage, she was at liberty to transfer the share to which she was entitled by Muhammadan law.

" 583. The Gigiánis, occupants of tappa Doába, deny the right of the widow to transfer in the event of her going on a pilgrimage, if her husband's brother is alive.

" 584. In tappah Razzar the widow's right was denied altogether, provided her husband's male relatives give her the necessary means of living.

" 585. Among the miscellaneous tribes of Naushabra, the widow can transfer the share to which she is entitled by Muhammadan law. This is supported by precedents. Relatives of her deceased husband can only claim the right of pre-emption.

" 586. There are precedents, except in tappahs Razzar, Utmán Náma, Doába, and Daudzai, in favour of a widow's authority to transfer her property as above mentioned ; but there are no examples to be found of transfer of property by widow's going on pilgrimage.

#### *" § 4.—II.—Division of property in land amongst sons on decease of the owner.*

" 587. The information was collected by the following questions :—

- " (1) How is the property to be divided between the sons of one wife who has been lawfully married ?
- " (2) How do the sons of two or more wives inherit ?
- " (3) If a widow has a son by her former husband, in the event of her marrying again, does he become entitled to a share of his step-father's property ?
- " (4) Can male issue born of a woman with whom *nikál* has not been performed inherit ?
- " (5) Are the male issue born of slaves entitled to any share ?

Question 1.—Division of property between sons of one wife. " 588. The general custom as regards question 1 follows the Muhammadan law ; that is to say, the sons divide equally.

" 589. In Khalíl it was stated that the share attaching to the arbábi is separate, and is the sole right of the successor to the arbábi, or chiefship. In Doába and Amánzai the eldest son alone was said to be entitled, besides his own share, to the inám attaching to the khanship or mallikship. In tappas Kamálzai, Razzar, and Utmán Náma, of sub-division

Yusafzai, the eldest son of the khan who succeeds to the khanship is said to be entitled to two shares of the ancestral property over and above the rights attaching to the khanship.

" 590. For these modifications of the general custom there are no precedents, except perhaps in Khalil and Mohmand, where the arabis are in possession more than the others. It is true in Yusafzai that the sons have not received equal shares; but this is usually traceable to the act of the father during his lifetime distributing his land unequally among his sons.

" 591. In respect of the subject of the second question, cases in which

*Question 2.*—Rule of inheritance for the sons there is male issue by more than one wife, it is generally the custom throughout the district, except of two or more wives. in sub-division Yusafzai, for the sons to inherit equally. This custom is locally known as *pagri vesh*. As between the sons, the custom is identical with the injunctions of Muhammadan law.

" 592. In Yusafzai generally the sons inherit *per stirpes*. The custom in the Punjab is known as *chundavand*, and in Peshawar as *parunai vaish* (*parunai* is the sheet worn by the women over their heads).

" 593. The customs thus stated are fully supported by precedent. The exceptions found are cases where the father has willed otherwise.

" 594. The child of a woman by her first husband is known as *parkatai*,

*Question 3.*—The right of a stepson to inherit his stepfather's property. and the stepfather as *plandar*. Custom does not entitle the *parkatai* to a share of his stepfather's property; only to maintenance until he comes of age.

" 595. Issue born of women with whom the ceremony of *nikah* has not

*Question 4.*—The rights of issue born of women with whom the ceremony of *nikah* has not been performed. been performed possess no right to inherit. Tappa Khalil, however, state that acknowledgment by the parents is sufficient to entitle them to inherit, even if illegitimate according to law.

*Question 5.*—Issue of slaves. " The children of slaves (*goli*) used to receive a share.

### " § 5.—III.—Rights of daughters and their children to succeed.

" 596. This was treated in six questions:—

" (1) Is the daughter or grand-daughter entitled to inheritance with the male heirs?

" (2) Are the powers of proprietors in respect to gift to their daughters or their issue restricted?

" (3) Supposing possession is held by the son-in-law or by the issue of the daughter, in the event of the death of her father without having executed a written deed of gift, will those in possession be entitled to remain so?

" (4) If the daughter or her issue after inheriting property die without issue, to whom does the property thus acquired devolve?

" (5) Has the giver the power, in his lifetime, to revoke a gift made to his daughter, or her issue or his son-in-law, notwithstanding the property is held possession of by those to whom given?

“(6) If a proprietor die leaving no male issue, but only unmarried daughters, what rights have they in their father's property ?

“ 597. In reply to the question regarding the rights of daughters and

*Question 1.—Succession of daughters and grand-daughters with the male heirs.*

the children to succeed, the general custom stated is that they have no right to inheritance in land. In the case of those villages where the Muhammadan law is said to be followed, the examples adduced seemed more to be cases of brothers having given up the share out of consideration than because of right.

“ 598. Except tappa Razzar, all are unanimous in allowing that proprie-

*Question 2.—The cus-*

tors can make gifts of land to their daughters. Dowries to daughters given by their fathers at marriage, locally known as *dehez*, are not unusual. In some villages, those near the city, widows are also said to be allowed the power of gift up to one-fourth and one-eighth. There are no precedents adduced in support of the widow's power to give away.

*Question 3.—The cus-*

tom and future wish in cases where possession is held by the son-in-law or by the issue of the daughter and no deed of gift has been executed.

“ 599. The custom hitherto was that a verbal gift was sufficient. For the future all wish it to be obligatory to have a written deed, but that the son-in-law in possession be continued as a tenant with right of occupancy. There are instances in support of verbal gifts. Tappa Razzar differs.

“ 600. The general custom is that it reverts to the father's cousins.

*Question 4.—To whom does property thus obtained by the daughter or her issue go if they die without issue.*

Tappa Razzar does not, under any circumstances, allow property to go to the daughter. The Khataks and some other tribes of tahsil Naushabro, and the Muhammadzais, wish, for the future, that such property should revert to the husband's cousins.

There are examples of its reversion to the father's relations.

“ 601. In reply to this question all agree that the gift cannot be cancelled.

*Question 5.—The cus-*

tom regarding the power to revoke a gift made to a daughter, her issue, or a son-in-law.

Yusafzai (tappa Razzar, who do not allow the gift) modify the general custom, and claim the power to revoke, if the daughter has no children. There is not one example forthcoming of a gift having been revoked.

“ 602. The general custom entitles daughters to a share till their

*Question 6.—The rights of unmarried daughters.*

marriage. The examples show that they have no direct control over the property. This is managed by their guardians.

#### “ § 6.—IV.—Adoption.

“ 603. The fourth heading refers to the question of adoption. This is not customary in the district, and requires no further remarks.

#### “ § 7.—V.—Power of transfer.

“ 604. Concerning the fifth heading, regarding the power of a proprietor in the matter of transferring his rights in land, the whole of the tribes, except tappa Razzar, are unanimous that the proprietor can do as he likes ; he can disinherit his heirs, or give some more and others less.

Razzar does not allow the proprietor this power. There are instances of proprietors having given more to one son than another, and having left some without anything.

### *“ § 8. Hindu customs.*

“605. Among the Hindus the principal customs deserving of notice are the following :—

*1st.*—Gifts by proprietors (male or female) are permissible,

*2nd.*—A gift cannot be cancelled after once being made.

*3rd.*—Adoptions of children at the age of 8 are usually made ; the adopted child must be of their own family, on the father's side, or their daughter's grandchildren, or their sister's children. The adopted children lose all claim to their own father's property, whether he have issue or not. The adopted children are entitled to share equally with the children of the adopter.

*4th.*—Illegitimate issue have no right to inherit. Those among the Hindus who have resigned themselves to a religious life follow customs peculiar to themselves. The local head of each sect (known as *gaddinashin*) is the sole manager of what land they possess. So long as he is in that position, he has no power to transfer, but can choose his successor from among the chelás or other members of the sect.”

## SECTION XIV.

### THE BANNU DISTRICT.

THIS Section is taken from the as yet unpublished Settlement Report by Mr. S. S. Thorburn, C.S. The Report has not yet been submitted to Government, but is in the hands of the Financial Commissioner :—

“ 205. This district has been the last or one of the last in the Province to be brought under a regular Settlement. General remarks on the state of customary law in Bannu. The delay, however regrettable on many grounds, has been of marked benefit in one respect. It has prevented the recording and perpetuating of several harsh so-called ‘ customs ’ which obtained at annexation, and were the outcome of the old law—

‘ That they should take who have the power.  
And they should keep who can.’

“ Had Bannu been regularly settled five-and-twenty years ago, one series of consequences to-day would most likely have been that women would have had no rights; that the custom of pre-emption in any shape would have been declared non-existent; and that ‘the deep-stream boundary,’ that *hadd-i-sikandar*, as it is called, would have been established as the ancient riverain law of the country. This latter was a practice engendered from necessity and suitable enough in the days when might made right; but it is, I think, a most inequitable and unreasonable rule in an ‘age of law,’ like the present. This deep-stream boundary has been recorded as the immemorial custom of thousands of villages in the Province, just because their customs were stereotyped too soon after annexation. Such villages seem bound for ever to the gambling uncertainty of their recorded position; although I imagine most of them would gladly be released from it, and agree to the rule in force for the Kurram and Indus villages of this district, *viz.*, fixed boundaries both for communities and individuals, whether the area be above or below water. The objection about the costliness of the survey of the whole of the river-beds is, I think, insufficient, as the village patwaris are quite capable of doing the work themselves. In this Settlement my men had completed their river-bed measurements before the revenue survey commenced their more scientific survey. And what is more, I have been able to amicably divide and map in parcels amongst the proprietary and occupancy individuals in every village of the Mianwali Kacha the beds of the channels within its limits. The channels so treated occupy 144 square miles (see paragraph 179).

“ In the thirty years which have elapsed since Edwardes first came to Bannu, tribal ‘ customs ’ regarding rights in property have been gra-

dually changing and assimilating to those current amongst other Musál-mán communities who have lived longer under a settled government. The key to the present state of the customary law of the different tribes in the district is to be found in their relative degrees of freedom from barbarism and priest rule. Thus, most of our wildest tribes, the Wazírs and Bhittannis, scorn the idea of a woman having rights in property ; tell you that she is as much a chattel as a cow ; and that if she, when widowed, wants to retain any interest in her late husband's property, she must marry his brother ; and that a man, to be entitled to hold his share of land, should be an able-bodied, fighting man. And yet when cases come into court, our courts as a rule do not uphold such 'customs' ; and the settled Wazírs are now inclining to accept the general rule of the district that a widow, so long as she remains a widow and there be no sons, has a life-interest in her deceased husband's property, and that all sons, whether strong or sickly, have equal rights of inheritance. Now, take an instance or two of the mental servitude a strong priesthood can impose on an ignorant superstitious people. It is, of course, to the interest of the Akhond and Mollah classes to exact an observance of the Shara law, where possible. Owing to this, in Marwat two opposite practices have been, so to say, concurrent. Disputes as to the devolution of property used generally to be decided at home by a board of 'ancients' or greybeards, who in their judgments followed custom, which was analogous to that of the Wazírs as noted above ; but whenever the parties could not agree, they went into court. As often as not they had previously determined that each should be bound by the Shara law ; although neither of them had any conception of what that law ordained. If Shara was not followed, the court decided the suit according to its own lights of what ought to be the custom ; and its own lights naturally caused it to decide that all sons should share equally, that widows should retain a life-interest in their husbands' property if he left no sons, and so forth. Take another instance, The extent of the *patriæ potestas* with reference to inherited property was a question which had to be answered. Could a father alienate his whole inheritance, though male issue were alive ? If not all, how much ? The Bannuchis at first unanimously declared he could give away all to whomsoever he chose, such being the Shara rule. Asked for examples of the exercise of such a power. Not one was forthcoming. Had any man so alienated half his land ? No cases known. As with the Bannuchis, so with the Isakhels and others. Thus reasoning from a series of negatives, the people over and over again were driven to admit that their first replies were erroneous ; and we had to record our answers to effect that no custom on the point existed, but that all were of opinion that, on disputes arising, if such and such a rule were adopted an equitable custom would grow up. Here and there I shaped public opinion on moot questions in the direction in which I myself and others of longer experience thought most equitable. Of course, it was open to us to merely record 'no customs' ; but for matters in which I knew disputes in future must be not infrequent, I thought it best that the courts of the future should have the benefit of the deliberate and matured opinions of the people and the superior settlement officers. No court need accept such an opinion ; and yet if it does not, I cannot help thinking a mistake will be made. No 'custom'

will grow up, but each case will be decided according to the personal view of the court at the time, and the statements of natives interested in the case.

“206. I trust I have made clear in the last rather discursive paragraph that many of the so-called tribal customs in respect to rights in landed property are still in a transitional stage; that I have not attempted to fix and stereotype any such as yet established; and that how such customs will ultimately crystallize, depends much on the value the courts will put in cases where only opinions have been expressed. As to the number and form of the different Tribal Codes, only one has been prepared for each tahsil. First comes the statement in full in a narrative form of the largest or most important tribe in the tahsil with most fixed customs, and then in shorter terms those of the other tribes. Only where such differ from the general custom are particulars of that difference recorded. Precedents are only given in support of conflicting or of the less universally acknowledged practices. It would have been a waste of space to give them in proof of customs none would ever dream of disputing. I give below a condensed translation of the questions, the statements having first been prepared in the form of questions and answers, and underneath each a concise abstract of the customs prevalent amongst the leading tribes. In all four tahsils the sequence of numbers is the same; so it will be easy for a court to make a rapid reference to any particular clause. I prepared no Customary Codes for Hindús. I did not think any necessary.

“CONDENSED QUESTIONS OF TRIBAL CODE, WITH ABSTRACT OF CUSTOMS NOTED BELOW EACH.

“207.—*Part I.—Rights of widows over deceased husband's real property and of wives over their peculium.*

“Question 1.—If a proprietor, living apart from his brothers and possessed of ancestral or self-acquired real property, die without leaving male issue—

“(a) Can his widow take possession as proprietor, or has she only a right to maintenance?

“(b) Does she enjoy the same right whether she has cohabited with her husband or not?

“(c) If the property be jointly held, can she separate off her share or not?

“(d) If her interest in the property be only for life or conditional, e.g., should she not remarry, can she administer it as she likes?

“Answer.—(a) She has, as a rule, a life-interest in the property if she continue a widow. Wazirs, Bhittanis, hill Bhangikhels, and many Marwats only admit a widow's right to maintenance; contradictory precedents common; custom still shaping.

“(b) Yes; but some say that, besides the performance of the *nikáh*, she should also have entered her husband's house.

“(c) Yes, generally; no established rule.

“(d) She holds for life or until remarriage. So long as she holds, she can, as a rule, administer as she likes.

*“Question 2.—Does a widow, whether childless or not, receive a share in her husband’s estate, though he may have left male issue ?”*

*“Answer.—No ; she has only a right to maintenance.”*

*“Question 3.—If a man die, leaving a widow and a son’s widow, and no other heirs, will both share alike ; or what ?”*

*“Answer.—Yes, alike.”*

*“Question 4.—Under what circumstances, if any, does the widow succeed to a share in her deceased husband’s brother’s (*dewar*) estate ?”*

*“Answer.—Only possible if there be no near agnates of her deceased husband alive ; few precedents. Isakhels admit widow’s right.”*

*“Question 5.—Has the widow power in any case to alienate by sale, gift, or mortgage, real property of her deceased husband, whether ancestral or acquired, divided or jointly held ?”*

*“Answer.—In cases of necessity, e. g., to pay deceased husband’s debts, marry a daughter, maintain herself, she can mortgage. In no case can she sell or give away. If the reversioners meet necessity, it ceases.”*

*“Question 6.—Should the widow remarry or be of bad character, can she retain what she possesses of her deceased husband’s property ?”*

*“Answer.—No ; but her ‘bad character’ must be notorious.”*

*“Question 7.—Has the wife authority to alienate her own peculium, e. g., *jahez*, or self-acquired property ? Has the husband any power over it ?”*

*“Answer.—Yes ; but the common practice is that what becomes the wife’s at once merges into the husband’s estate. Few precedents of separate alienation by wife. Bannuchis have some, but mostly judicial, and admit that a woman can have peculium ; custom not fixed. General opinion inclines to favour the woman’s right to hold peculium and dispose of it at pleasure.”*

## “Part II.—Devolution of real property.”

*“Question 8.—Do sons born in wedlock share equally in their father’s property irrespective of their several ages ?”*

*“Answer.—Yes.”*

*“Question 9.—On death of father, do sons inherit by *chundawand* or by *pagwand* ?”*

*“Answer.—By *pagwand*.”*

*“Question 10.—Do sons of gentle and low-caste wives inherit equally ; or how ?”*

*“Answer.—Equally everywhere, except in the Isakhel clan ; in which they each get one-third less than their otherwise full shares.”*

*“Question 11.—If a father divide his estate during life, and after partition a son be born, whether posthumous or not, will old partition hold good, or not ? And if a new partition be necessary, then how will shares be settled ?”*

*“Answer.—As a general rule, every son, whether posthumous or not, has a right to his full share.”*

*“Question 12.—If a father leave legitimate and illegitimate sons, do latter share in his estate ? If so, to what extent ; or are they only entitled to maintenance ?”*

*“Answer.—Illegitimate sons are of two sorts, viz., (1) chance bastards,*

and (2) those born out of wedlock but treated as sons. The first class get neither share nor maintenance; the second their full share. Precedents numerous. Marwats often do not marry until the woman becomes pregnant or has a son.

*"Question 13.—If there be no legitimate sons, what rights of inheritance or maintenance have illegitimate sons with reference to near agnates?"*

*"Answer.—As under No. 12."*

*"Question 14.—Does a stepson (*pichlag*) share in his stepfather's (*pitandar*) estate, or not? If not, is he entitled to maintenance from it?"*

*"Answer.—He gets no share, but is entitled to maintenance until puberty. Precedents numerous."*

*"Question 15.—If the father put his step or illegitimate son in quasi-proprietary possession of some of his property during his lifetime can the heirs on his death deprive him of it?"*

*"Answer.—No fixed custom; no precedents. General opinion is, the holder's right would be that of a stranger holding by gift; and no more."*

*"Question 16.—What right have a woman's children by her first and second husband over her peculium or other special property?"*

*"Answer.—No fixed custom. General opinion in favour of sons by first husband. Some say equal shares. Doubtful precedents exist."*

*"Question 17.—If a man die leaving no near agnates (*karibi yak jaddian*), and there be daughters and a widow, how will his estate be divided amongst them?"*

*"Answer.—Generally *per capita*. There are precedents. May Bannuchis say that the *Shara* law should be applied."*

*"Question 18.—On a father's death to what share, if any, does a daughter or her issue succeed—*

= =

*(a) when there are sons?*

*(b) when there are none, but other near agnates?*

*(c) and in a case of *khána dámádi*, can the daughter or her husband receive a share when there are sons or other near agnates alive?*

*"Answer.—(a) As a rule, she receives no share; but she is generally entitled to a usufructuary interest in half a brother's share until marriage; i. e., the real meaning is, that brothers must maintain her properly until she marries.*

*"(b) As above.*

*"(c) *Khána-dámádi* makes no difference in the rights of either."*

*"Question 19.—Does a sister receive a share of her brother's estate—*

*(a) should he die without male issue?*

*(b) should he leave daughters only?*

*"Answer.—(a) As in case 18 (a), unless she succeed in default of near agnates.*

*"(b) She would get no share. Bannuchis would follow *Shara*. No precedents.*

*"Question 20.—If a daughter die, leaving no male issue, after having received and held property from her father by inheritance (*irs*), or by revocable or irrevocable gift (*hiba mawak-at ya tamlik*), do her husband and his agnates, or her father and his agnates, succeed?"*

*"Answer.—*General rule is, that the husband and his agnates succeed. The Isakhels, however, say the father and his agnates ; and have some precedents.

*"Question 21.—*If a man die without male issue, up to how many degrees in the ascending scale do agnates succeed, to the exclusion of daughters and their issue ? And who are 'near agnates' (*karabatian yak jaddi*) ?

*"Remarks.—*The old practice was that any agnate, no matter how distant, succeeded. In fact, that daughters and their issue could not inherit in any case, the clan succeeding jointly when no man in it could prove his closer propinquity ; but since annexation such a rule has been little recognised ; and judicial precedents exist in all tahsils, except Isakhel, under which a daughter or her issue succeeds in default of near agnates within the fifth or sixth degree of affinity, ascending and descending to the deceased. No custom can be yet said to have been established. The question has generally been answered to the effect that, in default of near agnates, the daughter or her issue should succeed, and that near agnates are all males up to the fifth generation, the deceased being counted as one generation, in the ascending scale, and their male issue for a similar number of generations in the descending scale, for all plain-dwellers but Bannuchis, with whom the fourth generation takes the place of the fifth. Judicial precedents support this restriction, which is peculiar to the Bannuchis.

*"Question 22.—*What rights of inheritance have unmarried daughters on their father's death with reference to his male descendants and near agnates ?

*"Answer.—*Each to half a brother's share until marriage ; but, as a rule, they are content with maintenance. Numerous precedents.

*"Question 23.—*In the case of one daughter whose husband lives *khaṇa-dāmāl*, and another elsewhere, would each share alike in their father's estate, should a share fall to them ?

*"Answer.—*Yes ; each would share alike.

### *"Part III.—Partition of real property.*

*"Question 24.—*If one son during his father's lifetime increase the paternal estate by his own exertions, will he, on partition, be entitled to a larger relative share on that account over his brother's ?

*"Answer.—*He would not.

*"Question 25.—*Should one son pay the expenses of a parent's funeral out of his own pocket, will he be entitled to a larger share on partition on that account, or what ?

*"Answer.—*No ; but others must pay their shares of the burial expenses up to a proper amount.

*"Question 26.—*Should two or more sons remain partners on their father's death, and one by his energy acquire more property, on partition will he on that account receive a larger share ?

*"Answer.—*If they hold and work jointly, the energetic one would not get a larger share ; but if, notwithstanding property being undivided, their profit and loss account is separate, each would be entitled to the fruit of his own special exertions.

*" Question 27.—Does a half-brother (*sotela bhái*) share when a deceased half-brother leaves whole-brothers ?*

*" Answer.—He would not. There are, however, many exceptions.*

*" Question 28.—Should two full or half brothers live undivided after partition, and one of them die without male issue, will his share go to his partner, or be divided amongst all the brothers ?*

*" Answer.—Amongst all the brothers.*

*" Question 29.—Should a man die leaving orphan grandsons and sons, will the former receive their father's share or not ?*

*" Answer.—Yes.*

*" Question 30.—A father divides his estate, but reserves a portion to himself, and lives in partnership with one son ; on his death how is that share divided ?*

*" Answer.—Each son would get his full share.*

*" Question 31.—Should a father, without actual partition, give one son a portion of his estate, and separate himself from him, on the father's death how will that portion be treated ?*

*" Answer.—The general opinion is, that if the gift was meant to be, or accepted as, a final allotment of portion, it could not be interfered with, unless exceeding or falling short by one-third of that son's full share. If it did so, it could be curtailed or raised to such a limit. There are no clear precedents fixing a limit, though cases connected with the question are frequent.*

*" Question 32.—If a father on partition reserve no share to himself, but live with one son, and by his labour increase that son's share, on his death is that increase divisible or not amongst the other sons ?*

*" Answer.—It would accrue to the son with whom the father was living. Precedents numerous.*

*" Question 33.—If several brothers or cousins live undivided, and one by inheritance or gift obtain property from his maternal grandfather (*nana*) or wife's father (*susar*), on partition can he reserve such to himself or not ?*

*" Answer.—He can.*

*" Question 34.—A father leaves married and unmarried sons, are latter entitled to an extra share, or to anything, to defray their marriage expenses from former, or not ?*

*" Answer.—Yes, to their marriage expenses.*

#### *" Part IV.—Power of an Owner over his real and personal Estate.*

*" Question 35.—If a man during his lifetime place another in possession of his property as proprietor, will the transfer hold good on his death ; and up to what amount of property ?*

*" Remarks.—There are no precedents of a father disinheriting a son, or giving away most or a very large portion of his estate to one of several heirs or to a stranger. The general opinion is that, though such proceedings are permitted by *Shara* the owner's power of alienation should be restricted to one-third, unless there be no near agnates ; in which case there would be no restriction. Thus, the answer is that there is no fixed custom, but that if near agnates survive, the alienation should be*

upheld up to one-third of the property.\* In Mianwáli, however, and especially amongst the Awáns,† there are precedents of sonless owners alienating their whole estate to a daughter or son-in-law.

“Question 36.—To what extent is a will valid—

- (a) if there be sons or near agnates alive ?
- (b) and if not ?

“Answer.—Wills are seldom made. The *Shara* limitation of one-third would hold good about a will, or a life-made gift not subsequently revoked or followed by proprietary possession.

“Question 37.—When a transfer of property by gift, verbal or written, has not been followed by possession as proprietor, to what extent, if any, will it have effect on transferor’s death ?

“Answer.—As under No. 36.

“Question 38.—To what extent, if at all, can a man expend his property *fi-sabil-illah*? When a periodical charge is made on the property, are the heirs under any circumstances bound to continue it ?

“Remarks.—No large alienations for such a purpose are ever made; but small ones are frequent. The general opinion is that such an alienation should be upheld up to one-third of the estate, not more. No heir is bound to maintain a periodical charge. No cases of such a charge being made are yet known.

“Question 39.—Can sons or other heirs compel a father to divide his property or put them in possession of any part ?

“Answer.—They cannot.

#### “Part V.—Miscellaneous.

“Question 40.—Does pre-emption obtain in your tribe ? If so, what is the difference, if any, in custom regarding pre-emption of agricultural and building lands ; and if relations in degree of propinquity have not first right, who have ? Does pre-emption obtain in cases of sales disguised as mortgages, *e.g.*, a man mortgages his land at nearly full market value for a long term of years ?

“Remarks.—There used to be no recognised right of pre-emption, but a court-made right has grown up since annexation ; and the custom now is in accordance with the present statute-law. It is universally acknowledged that sales disguised as mortgages, *i.e.*, when the so-called mortgage is for twenty or more years, and the mortgage-money amounts to the market-value of the land, or nearly so, must be subject to a right of pre-emption. There are judicial precedents. In no case was the decision appealed against.

“Question 41.—Is a married woman always dowered ? If so, what is the custom about it on marriage ?

“Remarks.—Commonest practices are as follows,

“A dower is always fixed from a few rupees to several hundreds. It is often given in the form of jewels, or even of a plot of land. It is fixed at the time of marriage generally by verbal agreement, sometimes by an instrument in writing. After marriage man and wife often agree that, of the alms the former gives, a certain portion shall be considered the

\* In above the right of a man to squander his property is not meant to be restricted.—*S. S. T.*

† See the decision quoted on page 109.—*C. L. T.*

wife's, in return for which she renounces her dower in his favour. There is seldom any proof of such a renunciation. Hence when a woman is divorced without good cause, the court generally decree her the full amount of dower agreed on at marriage, or, failing proof about it, the amount fixed by the *Shara* law, or a good round sum.

“Question 42.—What are the requisites in the ceremony of marriage?

“Answer.—Mutual consent and reading of the *nikah* before two witnesses as laid down by *Shara*.

“Question 43.—What are the requisites for divorce? Should it be given without good cause, has the divorcee a right to her dower or not?

“Answer.—Either a duly drawn-up deed of divorce, or a verbal divorce repeated three times in the presence of two or more trustworthy witnesses. It is not necessary for the divorcee to be turned out of the house. She can claim her dower (see remarks under No. 41, last sentence).

“Question 44.—Is personal property on the demise of its possessor inherited in the same way as real? If not, state wherein the difference lies; also whether female ornaments are held to be the wife's *peculium* and at her absolute disposal on her husband's death.

“Answer.—Yes; female ornaments received from her parents are the wife's *peculium*, and generally at her absolute disposal.

“Question 45.—Who has the right of guardianship of the children in the two following cases—

(a) divorce?

(b) father's death?

“Answer.—In case (a) the father, unless the child be an infant. In case (b) the mother, and after her the nearest agnate.\* \* \* \* \*

“Question 46.—Does a widow or daughter succeed to an occupancy tenant's holding?

“Answer.—Yes; just as she would to a proprietor's holding?—

“Question 49.—If no term of mortgage is fixed—

(a) can a mortgagor redeem when he likes?

(b) can a mortgagee foreclose or recover his mortgaged-money?

“Answer.—In case (a) yes, when he likes, the time being *hárk* or land under a spring crop, and *chetra* for land under an autumn crop.

“In case (b) he cannot. Precedents numerous; but there are many judicial decisions which are in direct opposition to the established custom, as recorded above.

“Question 50.—When mortgaged land undergoes diluvion, who suffers, mortgagor or mortgagee, in the absence of any special agreement?

“Answer.—The mortgagee. Precedents numerous.

“Question 51.—What is the custom if settlement be made out of court for compensating—

(a) a man whose wife is abducted or seduced?

(b) parents or others when an unmarried girl is abducted or seduced?

“Remarks.—In case (a) he is given a marriageable young woman and a young girl or a sum of money according to the fixed scale of the tribe. Precedents numerous. In case (b) the same as above. The female being married or not makes no difference. Most tribes have their own peculiarities of practice. Miazais, Játs, and the zamindárs of the Mianwáli tahsíl always refer such cases to the courts.

\* As a rule, however, a court uses its own discretion.—S. S. T.

## SECTION XV.

### THE DERA ISMAIL KHAN DISTRICT.

THE state of the case here precisely resembles that of the Banu district. The Settlement has lately been finished ; the Report is unpublished, and still in the hands of the Financial Commissioner. The Settlement Officer, Mr. H. St. G. Tucker, C. S., has therein included the annexed paper as his Appendix XV. It affords a good illustration of the growth of usage at the present day. Public opinion is shaping ; and it is from public opinion that usage directly springs.

### APPENDIX No. XV.

#### *Customs affecting the Devolution and Transfer of Private Rights in the Soil.*

A *Riváj-ám*, or statement of customary law, has been prepared for each tahsíl of the district, giving the customs affecting the devolution and transfer of land among the Muhammadan population. A similar statement, but for the whole district, has been prepared for the Hindu population. As far as possible, individual cases have been quoted in support of the general rules laid down ; and exceptions, where forthcoming, have also been shown. There are many points with regard to which there is no clearly defined custom ; and in some cases it is a matter of doubt whether the custom, as stated by the people, should be accepted. The Extra Assistant Settlement Officer has noted in these statements against each custom his opinion as to how far it may be accepted as in accordance with facts.

2. I shall here merely summarise the result of these enquiries. As regards Hindu customs, these are much the same as in the Punjab generally ; and it is needless for me to particularise them. As regards Muhammadans, the rules affecting inheritance and transfer of land laid down by the *Shariyat* are almost invariably disregarded. The Babars, the Khetrans, the Beloches of Panmála and a few Sayads, are almost the only bodies of Muhammadans who profess to be guided in these matters by Muhammadan law ; though individual families all over the district now and then agree in disputed cases to submit their differences to some *Kází* to be decided in accordance with the *Shara*. Even the tribes who accept the *Shariyat* do not always adhere to it in its integrity, and have various devices by which they avoid giving effect to its provisions. There is

*Shariyat* generally ignored.

Unsuitability of the *Shariyat* as a rule for succession to landed property.

no doubt that the Muhammadan rules for inheritance, though well enough suited to cases where the property in question consists of flocks and herds or moveables, which can be partitioned at once, is most unsuited for regulating the succession to land. It is seldom that the joint lands of a deceased proprietor cannot be divided at once immediately on his death. In the course of a year or two, one or two of the heirs themselves die. Some of the heirs are women, and married to cousins, who are themselves heirs. The family retains the property in joint-ownership perhaps for 10 or 12 years, when some cantankerous sharer claims partition. By this time, if the case is made over to a *Kází*, the common denominator of the fractions on which the property is held will probably be found to consist of five or six figures. The exact order, too, in which the different members of the family have died in the interval must be ascertained, as brothers exclude nephews, sons exclude grandsons; and the fact of one dying a day or two before another may alter the shares entirely. To ascertain the exact order in which women married away in different families may have died, after some years have elapsed, is often impossible. The Miánkhel tribe in matters of inheritance follows customary law, and not the *Shariyat*. The family of the Chief Azim Khán of Gandi Umr, however, in one case agreed to abide by the *Shariyat*, and have been entangled in its meshes ever since. The family is exceedingly litigious; and no sooner has the account of their proprietary shares been cleared up than the death of one or two more uncles and aunts throws everything again into confusion.

### 3. Among the tribes who abide by the *Shariyat* its evil effects are

Method of avoiding the provisions of the *Shariyat* by tribes who profess to follow it.

practically avoided in a variety of ways. When a girl is married out, she is generally made to renounce all future claim to succession to her father's property, on the ground that she has received her share in advance. This gets rid of a large class of claimants. Mothers living with their sons never put in any claim; and the natural affection that exists in families nearly always leads to due provision being made for the family of a son who has died before his father. There is a great deal of a give-and-take system. A and B mutually marry one another's sisters, on the understanding that neither shall put in any claim to inherit on behalf of his wife. In some cases the rules of the *Shariyat* are to some extent openly set aside without any attempt to cloak their violation. The Khetrans, for instance, declare that it is only women of the tribe who are entitled to succeed to their shares under the *Shara*. Wives belonging to other castes get maintenance only. In the same way they declare that Khetrani women marrying out of the tribe lose their right to inherit. It is very seldom that these people marry out of their own tribe; and the instances for and against the custom as laid down are exceedingly few and of doubtful import. One important case that came up before me, where a Khetrani married to a Saddozai claimed inheritance, was settled by the plaintiff's privately receiving a large sum and agreeing thereon to withdraw her claim. I am of opinion that the custom as now stated by the tribe might for the future be acted on, though it is certainly not based on any clearly established previous practice.

**4. To leave the *Shariyat*, the customs with regard to inheritance**

Main features of the customary law as opposed to the *Shariyat* generally in force.

heirs in direct descent,

Position of a widow when there are lineal or collateral heirs male.

however, she has married one of the collateral heirs, the case is different, and she would retain the property as before for her life, and leave it to her husband on her death. In the same way a widow is often allowed to select one of her husband's heirs to manage her land and look after her, and the man selected would on her death succeed to the property to the exclusion of the other heirs. All widows are on an equal footing without regard to caste. A Belochhí and an ex-dancing girl would share and share alike.

**5. Neither local custom nor the *Shariyat* professes to lay down any**

To what degree should the right of collaterals to succeed be admitted?

limit to the succession of collaterals. As long as a man can trace his direct descent from the same common ancestor, he is entitled to the reversion of the property and excludes both daughters and widows from obtaining anything more than a life-interest. Actual cases where relations further removed than the grade of second cousins have excluded widows and daughters must be exceedingly rare; and the custom by which collaterals to any degree may inherit has not been satisfactorily established. In the Dera, Bhakkar, and Leiah tahsils, the people have now agreed to limit the succession of collaterals where there are widows, daughters, or daughters' sons to the degree of second cousin and its removes—that is, to the male descendants in direct descent of the deceased's great-grandfather. In Tánk and among the Gundapúrs and other Pathán tribes of Kulachi in recording the custom the people have not agreed to this limitation. In default of proof that remoter degrees of relations have been known to inherit in spite of there being widows and daughters, the limit of second cousin might, I think, be advantageously accepted for the whole district. Anything beyond that degree can hardly be considered to amount to relationship; and such distant connections should certainly not be given the preference over the daughters of the deceased and their children. In my further remarks, in speaking of collaterals, I shall mean such collaterals only as inherit in preference to widows and daughters.

**6. Even with regard to the moveable property of her deceased hus-**

band, the widow, when there are collaterals, does not possess full right of alienation. In certain cases, however, if the moveable property is insufficient, she may alienate even immoveable property.

These are—

- 1<sup>st</sup>, to pay her husband's debts;
- 2<sup>nd</sup>, for her necessary maintenance;
- 3<sup>rd</sup>, for expenses of pilgrimage to Mecca;
- 4<sup>th</sup>, to pay the Government revenue.

Before alienating the widow must inform the heirs so as to give them an opportunity of providing for the expenses detailed, and so saving the property. When there are no collateral heirs, the widow has full proprietary right, with free power of alienation.

7. When there are sons by different mothers, they share alike. In Custom of inheritance local phraseology, they inherit *pagwand*, not when there are sons by *chúndawand*. When they have once inherited, different mothers. however, the full-brothers inherit the property of a deceased brother to the exclusion of the half-brothers. In the Bhakkar tahsīl, the people state their custom to be that this rule as regards the brothers holds good if the property has been divided among them. When they hold the family property in common and one of them dies, all the brothers, full and half, divide equally the share of the deceased. This modified custom is also stated to exist among the Ushtaranas. No instances, however, have been brought forward in proof of it; and, in default of such proof, I think it safer to adhere to the general custom by which half-brothers are in any case excluded. There are a few cases in which the *chúndawand* rule has been acted on; but these are quite exceptional.

8. Stepsons and illegitimate sons do not inherit, but are entitled to maintenance till of an age to provide for themselves.

9. The descendants of a person who would have been an heir if alive take the share that he would have received, e.g., Right of the representatives of a deceased heir to inherit. the children of a deceased son, or of a deceased brother's share with the surviving sons and brothers taking their father's share.

10. Daughters and daughters' children are excluded from inheritance when there are collateral heirs or widows. Un-Daughters and their married daughters, like widows, are entitled to maintenance till they are married; and if they remain unmarried, they are entitled to manage the property and enjoy the income from it for their lives. Married daughters get nothing. When there are no collateral heirs or widows, daughters and daughters' sons, and, failing the latter, daughters' daughters inherit. Their property in this case is absolute, and they have full power to alienate. If there are no daughters, or daughters' children, then the inheritance goes to sisters and their issue.

11. No difference is recognised between hereditary and self-acquired Right to alienate property. The question as to how far a man may landed property by gift alienate his property by gift or will is doubtful, or will, there being no clearly defined custom on the subject. Through the greater part of the district the people have recorded that a man cannot sell his land, except in case of necessity, or to a limited extent. The free right of a man, however, to sell his own lands to whom he pleases, subject to claims to pre-emption, has never, to my knowledge, been questioned; and any statements of custom on this point to a contrary effect are incorrect. As regards disinheritance of heirs, in Leiah the zamīndārs recorded that a man cannot alienate his heirs altogether, but may alter the shares, and disinherit some heirs in favour of others. The Tánk zamīndārs recorded that a man has no power to disinherit or alter

shares, and that gifts to heirs, even coupled with possession, should be set aside on the donor's death. Written wills in this country are exceedingly rare, and their binding character is generally contested in the few cases where they may have been resorted to. In fact, they are seldom wanted, as the feeling of the people is so strongly in favour of the equal division of property among all the sons, that it is rarely that any one tries to favour one son at the expense of another. When there are sons, any disposition of property by will, not coupled with previous possession, unless it was substantially fair, would, if the case were decided by the general verdict of the neighbours, be almost invariably set aside. Now and then a man arranges by will for a division of his property on his death, and the disposition made by him, if in the main just, should in my opinion be upheld. Such a case occurred recently on the death of Sahib Khan Girsar, zaildar of Khanpur, when the will was upheld, though objected to by two or three of the deceased's sons. When a man has no

Gifts and bequests to sons-in-law and daughters-in-law and proclaims him his heir, then, whether the will is verbal or in writing, the son-in-law by general custom is considered entitled to succeed in preference to the collateral heirs. Even when there are sons, gift of a land made during a man's lifetime to his daughter or son-in-law, coupled with possession, would hold good after his death, and a gift followed by possession even to other persons would not ordinarily be interfered with, except on very special grounds. When a man is old and, though in possession of his faculties,

Disqualifying effects of old age. no longer capable of exercising an independent will of his own, dispositions of his property, coupled with possession, in favour of one heir to the detriment of others would generally on his death be set aside.

12. When a daughter or daughter's children have once inherited lands, succession to lands held by a daughter or her children. or obtained lands by gift, the succession to such lands is generally supposed to pass on their death to the family of the daughter's husband, and not to the family of her father. In some parts the people have recorded a contrary custom; but this should not, I think, be recognised without proof that it actually exists, which has not hitherto been forthcoming.

## SECTION XVI.

### THE DERA GHÁZI KHAN DISTRICT.

§ 1. *Mode of preparing the records of Tribal Custom.*—The zaildars, rural notables, heads of villages, and all the members of tribes who were willing to attend, were summoned, and their answers to previously prepared questions taken down. Examples, decided cases, and exceptions to any general rules, were noted. The answers were framed in the presence of the Superintendents and Extra Assistant Settlement Officers, and were attested by the representatives of each tribe, in most instances either before Mr. Fryer or myself.

Mr. Fryer mentions in paragraph 287 of his Settlement Report of 1875 that I had promised to draw up a Note on my translations of the Tribal Records of Rights. This promise I have not, till now, been able to fulfil. The records I translated were the four general *Riváj-áms* for the several tahsíls. I did not translate the separate volumes for the Lúnd, Leghári, and Khosa tribes, or that for the Beloch tribes of the Jám-pur Pachád.

It will be convenient to distinguish between rural customs belonging to localities without regard to tribe, and tribal customs, relating to succession and the transfer of property, which vary somewhat with religion and race.

§ 2. (1) *Rural customs.*—These deal with the nature of proprietary right, the relations of landlord and tenants, and the rules of alluvion and diluvion.

The chief points in connection with the nature of proprietary right are (1) the non-existence of the village community; (2) the origin of title in tribal distribution and expenditure of capital and labour; (3) the prevalence of periodical redistribution of lands in the Sangarh tahsil. On the first and last of these questions I have made elsewhere such remarks as seemed necessary. Some notes on the second question will be found below.

On the customary status of different classes of tenants Mr. Fryer's Report is particularly full and clear. I here reproduce the portion of his volume which deals with this subject. As I have already said, I have in general excluded from this series questions bearing on the relations of land-

lord and tenant. I make an exception here, mainly because Mr. Fryer's concise paragraphs are a suggestive model for future statements of the kind, but partly because I have a few additions to make which my notes enable me to supply.

### " § 3. *Landlord and tenant—Rent.*

" PARA. 40. \* \* \* Under former Governments the share of the produce taken by the Government was well defined, and was known as *mahsul*. This share was usually one-fourth of the gross produce, sometimes taken before, and sometimes after, deducting the pay of the village servants, but it varied on considerations of the policy and of soil. The proprietor's share was known as *lich*, and was one-sixteenth of the produce remaining after the *mahsul* had been deducted. The balance\* of the produce went to the tenant.

" 213. Rent or proprietary dues are known by many names: *lich* (*khuti-bhutari* in Sangarh), *jholi*, and *tobra*.

" *Lich* is usually one-sixteenth or one-seventeenth (*sol satari*). *Lich* is paid often according to private agreement.

" *Jholi*.—This is the amount of grain that the proprietor of land may carry off in his sheet or scarf. The share is often included in *lich*, and usually represents one sixty-fourth of the produce.

" *Tobra*.—This is the amount of grain which a proprietor may carry off in his mare's nose-bag."

It will be seen from these two paragraphs that the first definition of *lich* must be modified by the second. My notes show a distribution of the produce in the Sangarh tahsil rather different from that which Mr. Fryer describes. This was on the *sol satari* principle, literally, sixteen shares and a seventeenth. One-seventeenth of the heap was set aside for *lich* and the village servants. A proportion, probably one-fourth of the residue, constituted the *mahsul*; the remainder, after deducting the *mahsul*, went to the tenant as *rahkam*. No doubt, though the general character of the division is the same, details will vary from place to place. The difference here is that, according to my account, the *lich* was one-seventeenth of the gross produce, the first share taken from the heap being slightly over-estimated, so as to leave enough for the *kamins*; whereas by Mr. Fryer's account the *lich* is one-sixteenth, not of the gross produce, but of the gross produce less the Government share. As *lich* is often paid according to private agreement, this may account for the discrepancy.

Probably, in the general opinion, the receipt of *lich* would be a much more distinctive mark of true proprietary

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\* This was known as the *rahkam*.

right than the receipt of such a due as *jholi*. I find a note that the attendants of the Sakhi Sarwar shrine, in addition to the revenue released in their favour, get some *jholi*, but that this is not considered any proof of proprietary possession. Similarly, the Lúnd Tumandar takes 1 pai per *path* in Shahdan Lúnd as *hakk mukadami*; but this is no proof of proprietary right.

#### “§ 4. Tenants.

“PARA. 222. The tenants of this district are known as ‘múndemár,’ ‘bútemár,’ ‘jhúriband,’ ‘kúlmár,’ ‘látmar,’ ‘churáit,’ ‘rahk,’ ‘khadina,’ ‘lichain,’ ‘miádi.’”

I may add to this list “shartíyah” (tahsil Sangarh), a tenant for two harvests. In the river lands of tahsil Jám-pur the “lichain” is known as “hatháin.” There are also tenants called “dholemár” and “vaholimár;” I believe their rights are founded on clearance, but I have no detailed account of their status.

“223. The móndemár tenant is one who in the Sindh lands clears Rights of a ‘mónde- jungle and brings land under cultivation. The már’ tenant. ‘móndemár’ tenant exercises the following rights :—

- (a) He cannot be ejected as long as he continues to cultivate.
- (b) The occupancy-right is heritable in the direct line.
- (c) He can cut self-grown timber for agricultural purposes.

“224. The following rights are not generally recognised, but they are Rights not generally claimed in some cases and their admission by parti-recognised. particular landlords, or by the general body of land-owners, is regulated by local custom :—

“I. *The right to sink wells.*—A tenant cannot sink a pucca well without his landlord’s permission, but he can sink a kacha well, though his doing so gives him no claim to compensation. The right to sink even a kacha well is not admitted universally.

“II. *The right of the landlord to eject on payment of compensation.*—This right does not exist. It was, however, once awarded a landlord, in a suit to eject a tenant who had been out of possession of the greater part of his holding for three years. This suit was tried in the senior Extra Assistant Settlement Officer’s Court.

“III. *The right of subletting.*—There is much difference of opinion as to the existence of this right. The correct view seems to be that a tenant may sublet his holding temporarily, but not permanently.

“IV. *The right of building houses.*—A ‘móndemár’ tenant has this right; but if he vacates his holding, he can remove only the building materials he has paid for himself. This is the general rule.

“V. *The right of transfer.*—This right is denied in most cases. Where it is admitted, it is provided that, before any transfer of tenant right can be made to an outsider, an offer of the right must be made to the land-owner.

“VI. The right of inheritance to rights of occupancy in the direct line is unquestioned. It is not allowed to females or collaterals, but the practice on this point has been very loose, and any heir of a deceased occupancy tenant able to cultivate has ordinarily been allowed to do so. This is owing to the scarcity of tenants in the district.

“225. If an occupancy tenant’s land is carried away by the river, he

Rights of occupancy  
in land carried away by  
the river.

loses all claim to it. In the Mazari country the tenant can reclaim his land when it is again thrown up by the river.

Tenant may be ejected  
for cultivating inferior  
crops.

“226. A tenant with rights of occupancy may be ejected if he wilfully cultivates inferior crops.

“227. In some cases a ‘múndemár’ tenant is only admitted for a term of years at light rates. At the expiration of this term he may be ejected.

“228. A ‘bútemár’ tenant is the same as a múndemár. In the Sangarh “Bútemár” tenants. tahsíl a bútemár tenant exercises none of the rights of which the enjoyment by occupancy tenants is doubtful in the rest of the district.

“229. The ‘latmár’ tenant is a tenant who erects embankments for irrigation in the Pachád. His rights are the undisputed rights of a ‘múndemár’ tenant. It is, however, very usual for a ‘latmár’ tenant to take out a lease for a term of years. In mouzah Gádái, tahsíl Dera Gházi Khan, the custom as regards ‘latmár’ tenants was proved to be that they could not be ejected until the band which they had embanked had obtained one good supply of water and borne one good crop. The position of a “latmár” tenant is mostly governed by local custom.

“230. The ‘jhúriband’ tenant is only found in the Sangarh tabsíl. The ‘jhúriband’ tenant. The tenant pays the landlord a *nazarána* in cash or in kind, and the landlord marks out the tenant’s lands by tying down the bushes, *jhúriband*. These tenants are found in *bēt* or river lands, and their rights correspond with those of the bútemár.

“231. The ‘kúhmár’ tenant in Sangarh corresponds to the ‘adhlápi’ The ‘kúhmár’ tenant. proprietor in other tahsíls. The ‘kúhmár’ is, however, only a tenant, and his tenure lasts as long as the pucca brick or wooden well he has sunk lasts. The ‘kúhmár’s’ heirs in the direct line succeed him. The proprietor receives only *lich* from the ‘kúhmár,’ and the *lich* payable is fixed at the commencement of the tenure.

“232. The ‘churáit’ tenant is a tenant-at-will and can be ejected at the close of the agricultural year. The churáit The ‘churáit’ tenant. tenant pays *anwánda* as well as *lich* and *mahsúl*.

“233. The ‘ráhk’ is a paid labourer—a mere farm-servant. The ‘ráhk’ tenant. The ‘ráhk’ is sometimes paid a share of produce.

“234. The ‘khadina’ tenant is found in the Sangarh tahsíl, and is a paid labourer: His clothes are found by his master, and he is expected to give them up if he leaves his service.

" 236. The 'lichain' tenant is found in the Sangarh tahsíl. The bullocks used by the 'lichain' are the landlord's, and the 'lichain' receives only half or one-third the gross produce after deducting *lich* and *mahsul*. If the 'lichain' tenant receives one-third produce, he is paid Rs. 2 to 5 per annum. These tenants have to find an amount of seed equal to their share of produce. A 'lichain' tenant is sometimes given a cash advance by the proprietor, and cannot throw up his holding until he has repaid it.

The 'miádi' tenant. " 237. The 'miádi' tenant is, as the name implies, a tenant for a term."

The Mazaris of Rajanpur do not claim to eject a tenant who sows inferior seed. In the Pachád or submontane tract of the same tahsil there is an equitable custom connected with embankment, but as between landlords, not as between landlord and tenant, which may be called the rule of *lat bandi*. It comes to this, that a man must not benefit by another's bank without paying for it. For instance, A embanks his field, one side of which marches with B's field. B does not contribute in any way; subsequently B banks round the three remaining sides of his field, thus obtaining the use of A's bank, constructed at A's sole expense. B must pay A for the use of the bank.

§ 5. *Anwánda*.—There are two passages in the Settlement Report which relate to "anwánda,"—one describing it as a share of the produce taken by the tenant, and the other as a share taken by the landlord. According to the *Riváj-áms* it is taken sometimes by the one and sometimes by the other. It is a rent paid in kind on account of improvements, the correlative of "adhlapi" and "poria" and "mashakkat," which will be referred to presently. Under the custom last named, the improver is compensated by property in the land; here he gets his return in a fixed share of the produce, which is appropriately calculated on the portion of it falling to the tenant. The actual occupant is the person who could most readily clear the jungle, embank the holding to retain the water of hill-streams, or bring a cut from a canal to his plot of land. But if another individual, the superior tenant or the proprietor, steps in, and does any one of these things for the occupant, then the latter must pay for the benefit by a share in kind out of what he himself receives. This share is "anwánda." It varies from a fourth to an eighth. The cultivation is then so far joint that it is usual for the party who made the improvement and who takes the anwánda to provide seed in proportion to the anwánda itself; that is to say, if the anwánda is one-fourth, the proprietor or over-

tenant gives one-fourth of the seed. In like manner, he generally shares in the other expenses of cultivation. It is, I think, well worth while to study arrangements of this kind with some minuteness. They are almost invariably based on sound sense, and to us most instructive, because they indicate the method of co-operation to which Native habits adapt themselves, wholly different as they are from those of advanced societies.

*§ 6. Modes of acquiring proprietary right.*—These are enumerated in paragraph 210 of the Report—

“I. *Patchir*.—This \* \* \* refers to the original distribution of land amongst a tribe. *Pat* means land, and *chir* means to divide. ‘*Pat-chir*’ is division of land, and means acquisition of land by original tribal division.

“II. *Dak*.—This form of acquisition of land arises when lands are portioned out amongst co-sharers. For instance, the new cultivation of the Mánka and Dhúndi canals was given out in *daks* or parcels to each contributor to these canal extension schemes.

“III. *Sil*.—*Sil* means a brick, and is a term applied to proprietorship gained by sinking a well in waste lands. The owner of the well generally owns the land in which it is situated.

IV. *Adhlápi*.—This is a very common form. The proprietor of a well-estate not possessing a well gives half his land in proprietary right to an outsider, who sinks a well and thereupon acquires the proprietary right of half the well and of the lands attached to it. The ‘*adhlápi*’ share is variable, but is generally half—sometimes it is only one-fourth—of the well.”

—The land is cleared at the joint expense of the two persons, whose shares in the improved property are often proportioned to the expense respectively incurred by them. The alienation of the part of the land which goes to the well-constructor is usually subject to the right of pre-emption. He often makes the original proprietor a small present in cash in acknowledgment, it is said, of the proprietary right of the latter. The agreements are frequently in writing; and the contract obtains in the case of masonry wells only. In Rajanpur a tenant who sinks a *kacha* well has his rate of *batai* reduced for some years.

“V. *Ghasab*.—This is the term applied to a forcibly-taken possession.

“VI. *Poria*.—This is a proprietorship acquired by manual labour. One-eighth or some smaller share in a well may sometimes be bestowed in return for jungle clearance or such like. This tenure only prevails in parts of the district thick with jungle and where tenants are not easy to come by.”

There is another form of acquisition resting, like four

out of the six forms above enumerated, on the expenditure of capital and labour on the soil, and combining the features of *adhłápi* and *poria*. This is known as *mashakkat*, literally labour. No well is sunk, but the improver clears or levels land in consideration of obtaining a share in it as his property. The custom obtains in the Dera Gházi Khan and Jámpur tahsils; and in two out of four instances which I have recorded the share given was as much as one-fourth. In one instance it was one-third; and in the last it was one-seventh. There is no real distinction between this and *poria*: the thing is the same with a different name; but in *mashakkat* the clearer usually makes a small payment in cash to the original proprietor. The transaction, therefore, is a purchase, partly by cash and partly by labour or the provision of labour.

I have thought it worth while to detail the foregoing particulars, first, because of the light they throw upon the origin of title, and therefore upon the primitive history of property, and secondly, because with two exceptions, all these forms of right are beneficial as rewarding improvement. The seizure of lands by force and tribal distribution carry us back to the epoch where the pastoral yields to the agricultural phase of society. Payment for labour in the soil on which it is expended and compensation for capital in the land improved, are practices the extension of which to other and wider fields might produce excellent results. It is a problem in many large undertakings how to attract capital to the soil, and these purely indigenous customs suggest an adjustment of title that may not infrequently prove a sufficient inducement. A share in kind, whether in land or its produce, is a Native idea, and therefore the more easy to work upon.

§ 7. (2) *Succession and transfer of property.*—These subjects will most conveniently be treated in the order followed in Vol. III, and already adopted in the case of Siálkot. I shall note, therefore, upon—

- (1) rights of son;
- (2) rights of widows;
- (3) rights of daughters;
- (4) partition;
- (5) transfer of property.

It will be understood that my remarks do not include any special rules that may have been recorded for the Lúndis, Legháris or Khosas or for the Jámpur submontane tracts, as in these cases I have no translations of the tribal state-

ments. With these exceptions I refer throughout to all four tahsils of the district, save where the contrary appears from the context. The tribes, other than Beloches, which regulate their affairs by the Muhammadan law are numerous. I have excluded them from my summary. I should add that the four tahsils in order from north to south are Sangarh, Dera Ghazi Khan, Jampur and Rajanpur.

§ 8. (1) *Rights of sons.*—The general custom is that all legitimate sons divide the inheritance equally. Uterine apportionment, the *chundavand* principle, nowhere obtains; but the Drishak and Mazari Tumandars\* in Rajanpur, the descendants of certain special families in the same tahsil, and the eldest sons of certain families in Jampur, receive an extra amount on account of their exceptional expenses. One Kaure Khan, Jatoi, a well-known prominent man in Jampur, possessing lands on both sides of the Indus, said that in his family an estate of four villages in Jampur went to the eldest son. Generally there is equality of filial inheritance, tempered by some preference for the eldest son in leading families. There is, however, a singular exception in the Rajanpur tahsil, where no less than 61 Hindú tribes or clans asserted that the estate was so divided as always to give the eldest son one share more than the rest. Thus, if there be two sons, the estate is divided into 9 shares; the elder takes 5 and the younger 4; if there be 3 sons, 13 shares are formed and are distributed, 5 to the eldest, and to the other two 4 each. The same principle is always followed whatever be the number of sons. No distinction arises in the case of Musalmans amongst sons of wives of different origin; the Hindús say that marriage out of the tribe is not permissible. A son does not acquire any claim to a larger share by reason of his having increased the family property. Illegitimate sons, even if there be no legitimate offspring, do not inherit. It is the general opinion amongst Muhammadans that a stepson does not inherit from his stepfather. The Sayads of Dera Ghazi Khan and the Beloches of that tahsil and of Rajanpur consider that a stepson inherits from his natural father only. As regards the right of representation, the statements conflict: the Beloches and other Muhammadan tribes of Sangarh say that grandsons do not take in the presence of their uncles. The like rule, which is that of the Muhammadan law, is extensively observed in Rajanpur and Jampur; but in the Dera Ghazi Khan tahsil the testimony amongst Musalmans is unanimously to the effect that custom assigns the grand-

\* A Tumander is the chief of a tribe.

son a share. I think that statements in derogation of the right of representation should be accepted with very great reserve. Instances are adduced from which it appears, though not with great clearness, that the share is regulated *per stirpes*; that is to say, the estate is allotted as if all the sons had survived, and a share, equal to that of each of the uncles, goes to the grandson whose father has predeceased the *de cuius*. In the two northern tahsils all classes are agreed that a father, on just cause of displeasure, may deprive a son of his share by transferring it, *inter vivos*, to another; but this may not be done, according to the Sayads of Dera Ghazi Khan, out of favouritism towards the person benefited. The Beloches of Jampur hold the same view: but the Hindús of that tahsíl state that the arrangement will have effect for the life of the father only. On his death the son can take the share of which he has temporarily been deprived. In Rajanpur displeasure does not entitle the father to alienate: but he can do so, on such occurrence, after consulting the brothers and the Tumandar. There is no general custom of adoption amongst Beloches or other Muhammadans. The Hindús of Dera Ghazi Khan say adoption used not to obtain, but has begun to be practised within the last 20 or 25 years. They give three instances. The Hindus of Rajanpur do not adopt according to the Shastra. There were two cases practically amounting to adoption amongst them, one [39] and the other 33 years ago. In Jampur the Hindus affirm that no such practice exists.

§ 9. (2) *Rights of widows*.—Amongst the Beloches, Hindus, and the miscellaneous Muhammadan tribes who do not follow the Muhammadan law the position of the widow generally resembles that assigned to her in the Hindu law. The prevailing rule therefore is that, if a proprietor, separated from his brethren and brothers' sons, die childless, the widow has possession for life. If there is more than one widow, they share equally, without distinction of origin or descent. The usual conditions of the tenure, where it occurs, are chastity and abstention from remarriage. All the Beloches think that by misconduct or a second marriage the widow will lose whatever right she has acquired; except that those of Rajanpur say she can retain property received from her parents. The Sayads of Dera Ghazi Khan state that she can, in such a case, take her dower only: the Jats of the same tahsíl would give her the dower (*hak mahar*) and her share by Muhammadan law. The Hindú view is that second marriages are unlawful, and that, if the widow

misbehave, she loses the estate. To the general rule of a life-interest above stated there is the exception of the Beloches of Jampur, who repeatedly asserted that the widow is entitled to maintenance and to nothing more. One or two instances are quoted; but in another case, amongst the Ahmadanis, where the widow had possession for life, the evidently unreasonable explanation given is that the heirs could not support her. If they had taken the estate they would have had the wherewithal. I think, therefore, that this opinion of the Jampur Beloches should be received with much caution. The Beloches of Rajanpur spontaneously declared that whether the husband be joint or separate, the widow has a life-interest.

As regards the nature of the widow's interest, there is, as might be expected, considerable diversity of alleged practice. The Beloches, with the exception of those of Dera Ghazi Khan, affirm that she cannot have partition of her share out of an estate held jointly by the deceased and his kin; the contrary is asserted by the Dera Ghazi Khan Beloches, who gave no examples. The Bozdars of Rajanpur, also adducing no instances, said the widow could have partition if the other heirs damaged her estate. Amongst the Hindus of Rajanpur and Sangarh it was said that she could effect partition; this the Hindus of Dera Ghazi Khan restricted to her husband's self-acquired moveable property.

In respect to transfer, widows, other than those in tribes who give legal shares according to the Muhammadan system, cannot, as a rule, alienate in any way the immoveable property lately belonging to the husband; but if in great necessity and unaided by their relatives, such widows may usually alienate under certain restrictions: the Beloches of Dera Ghazi Khan and all classes in Rajanpur say by mortgage, not by sale; the Sayads of Dera Ghazi Khan say to the legal heirs exclusively; the Hindus of the same tahsil confine the right to a separate estate, and refuse it as regards a share in a joint one. The Beloches of Jampur, who deny the widow more than maintenance, consistently refuse her any power of alienation whatsoever, whether of the moveable or immoveable property of her late husband. Elsewhere there is a difference in respect to his moveable property. This the Hindus generally, except in Sangarh, think she can alienate by gift or bequest. The Beloches of Dera Ghazi Khan are of the same opinion. Those of Sangarh, with other Muhammadan tribes, allow her alienation of this

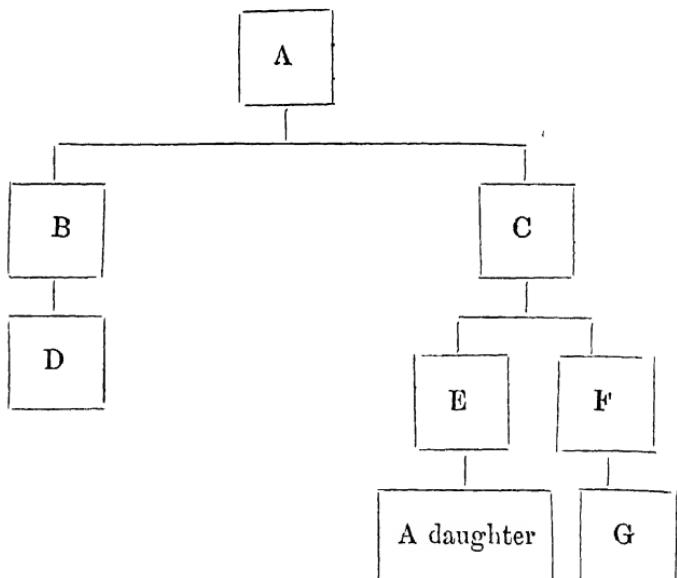
sort of property by way of almsgiving only. The Beloches of Rajanpur make no distinction. The Sayads of Dera Ghazi Khan say that the moveable property may be alienated to the legal heirs exclusively, unless the widow be neglected and a stranger do her service, in which case she may make a gift to him. It is generally held that a widow can alienate property she has acquired from her father or mother, or by her own exertions.

§ 10. (3) *Rights of daughters.*—In general, notwithstanding the rules of the Muhammadan law, daughters, in the presence of male descendants, do not take any share; but this principle is not rigidly enforced. The answer of the Beloches of Sangarh and of other Musalman tribes, whose customs coincide with theirs, correctly represents the prevailing feeling on the subject. "According to law," they say, "daughters have a right. According to custom they do not take a share. Generally, daughters do not require shares. They are more closely connected with their parents-in-law than with their parents by blood. If any daughter needs a share, she receives it; if it is not given her, she sues and obtains it." Hindus everywhere and all tribes in the Dera Ghazi tahsil say daughters do not take. Amongst the Beloches of Jampur daughters do not get shares, nor have they claimed them. Such statements are often qualified by the addition that a daughter may keep a father's gift. In the case of the Dera Ghazi Khan Sayads, there are, at least, four instances of daughters obtaining shares where their brothers were alive; and they get their legal shares in the Makwal, Malan, Vandata, and three other Jat tribes of that part of the district. No daughter acquires any better right than she would otherwise have had amongst either Beloches or other Muhammadans or Hindus by remaining in her father's house, either after marriage with her husband, or as a virgin for her life for religious motives. The Hindus of Dera Ghazi Khan expressly say that *khana-damadi* [the practice, already several times alluded to, whereby the son-in-law takes up his abode in his wife's family, obtaining in the Panjab under the name of *ghar jawai*] does not prevail. And the Sangarh Hindus affirm, as no doubt the rest would have affirmed had they thought the enquiry as to virgin daughters had any reference to them, that there are no unmarried daughters amongst them.

Where there are no male descendants, a very distinct rule is asserted by the Hindus of Sangarh. They say that,

if there be no kindred connected by common descent from the great-grandfather of the deceased, the daughters will take. Amongst all the Muhammadans of the Dera Ghazi Khán tahsíl the view is that the daughter, in the absence of male off spring of the deceased, will have her legal share. The Hindús in the same tahsíl make the heirs, not the daughter, but the kindred of the same stock. Subject to the doubtful exception of that tahsíl, with the Beloches daughters seem nowhere to habitually take, even if there be no sons; the brothers, say the tribesmen, and the brother's sons exclude them. An instance, however, is given of a Beloch daughter obtaining a share in the Nathkani tribe of Sangarh; and there is certainly the idea here, as in the case of the presence of male descendants, that, if the daughter stand upon her right and go to law for her share, she will not be refused.

The knotty question, within what degree must the near kin come to exclude the daughter if they are preferred to her in the absence of male descendants, mostly failed to elicit a pertinent answer. That of the Hindús of Sangarh I have already given. The only other reply it is worth while to quote is an interesting one made quite independently by the Beloches of Rajanpur and Jampur respectively. In their phrase the limit is two generations: in ours the daughter is excluded by the cousin-german or relative in the fourth degree. This will be most easily explained by a table.



Here E dies without male descendants. Any one in this

table, his brother, brother's son, father, grandfather, uncle or first cousin will exclude the daughter. The sons of D, the first cousin, perhaps would not exclude her, nor certainly would the descendants of E's great-grandfather by another son than A.

**§ 11. (4) Partition.**—There is unanimous agreement that a father making partition with his sons can give them unequal shares, and that he can reserve a share for himself. If a father have at partition reserved a share or a particular thing for himself and one or more sons remain associated with him, whilst one or more, taking their shares, set up separately, then it is said by all classes that all the sons will on the father's death divide such reserved share or thing without distinction between the associated and the unassociated brethren. But where the father, reserving nothing for himself, continues in union with one or more sons after partition, the general opinion is that the property subsequently acquired by the father and the sons joint with him goes to them only, to the exclusion of the separated sons. It is also almost universally accepted, some of the Ját tribes of the Dera Gházi Khan tahsíl being in the minority, that if after partition another son be born, the partition may be cancelled so that such son will have his share. It is added that a posthumous son can also claim a share.

How far a widow can have partition out of a joint estate is a point that has been referred to above. Where two or more cousins or brothers are associated and one acquires immoveable property by gift from a maternal grandfather or father-in-law, it is unanimously stated that such gift may be reserved by the donee on partition, the other coparcenar or coparcenars taking no share in it. The Hindús of Sangarh said that all the associated brethren would, on partition, share equally in moveable property acquired by one of them, but as regards immoveable property, they accepted the rule just mentioned. On the other hand, as touching acquisitions not by gift from a relation, but by individual exertion, it was held throughout the district that these must be treated at partition as of the common stock and subjected to equal division with the rest of the property. Questions were asked to ascertain if in the succession of brethren to one another distinction was made between associated and unassociated brothers, and those of the whole and of the half blood. The replies are too conflicting to admit of generalisation; but I think the preponderating opinion was that there is no distinction either of the

whole or half blood or in consequence of dissociation. Probably in most cases, whether joint or separate, or of the whole or half blood, the surviving brethren, when heirs to a deceased brother, would divide his property equally.

**§ 12. (5) Transfer of property.**—Remarks have been made elsewhere upon leases and mortgages, so I here confine myself to gifts and sales. The restrictions on the power of the widow to alienate have been indicated.

It is said by all, except the Hindus in Rajanpur, that a gift which has not come into possession can be reclaimed under any circumstances. The Rajanpur Hindus regard a gift as absolute whether possession ensue or no. All the Sangarh tribes hold that the father cannot disinherit his offspring and give away the whole estate; but that he can, reserving some part of the estate for the sons give away the residue to a stranger or to his daughter or son-in-law as he may prefer. Every class in the Rajanpur tahsil and all the Muhammadans in the Dera Ghazi Khan tahsil said the father had full power to alienate by gift. The Hindus of the latter tahsil would follow the Dharm Shástras. In Jampur those classes which are not under the Muhammadan law said the father could make a gift to a proper extent, for example, to his son-in-law, and could give by way of dowry to his daughter or sister. Respecting the power of a proprietor to alienate by gift, in the presence of near kindred, where there are no sons, few replies were distinct. The Sangarh tribes in this case allowed the proprietor full power in every way; the near kindred, said the Beloches, could not restrain him. Elsewhere, the usual answer was that a father who had no sons could make a gift to his daughter or daughter's sons, which, I suppose, indicated the general view as to what ought to be done under the circumstances.

In each tahsil the several tribes answered about pre-emption collectively. The most noticeable point is that in Jampur and Rajanpur, though not in Sangarh, the extent to which pre-emption can be claimed is measured by the share of the pre-emptor in the property. Thus, in Jampur, where Behari and Chetan sold a well to an outsider, Hema, the coparcenars Nangpal, Dewa, and Charkandar sued for pre-emption, and all got shares proportioned to their shares in the property. The answer in Rajanpur is characteristic; I will give it at length with a summary of the replies for the other tahsils.

*Rajanpur.*—“Pre-emption does not obtain in mortgages.

Custom with respect to sales follows the Muhammadan law. The rules laid down in Act IV of 1872 about pre-emption will be observed. There is this difference in our custom compared with the Muhammadan law, that the law gives the right to all the proprietors. ' We give the right to each proprietor according to his share.' " The Drishaks added, "The right of pre-emption comes first to the near ancestral kindred. For example, four persons of different tribes are joint owners, Drishak, Gopang, Jamrah, and another. A Drishak sells his share. His Drishak relations, whether they have a share in the land sold or not, have the first right of pre-emption." The other tribes did not admit this exception, and the Drishaks did not give an instance.

*Sangarh*.—The pre-emptors are, first, the joint-owners in equal shares, whether their own shares be equal or no ; secondly, neighbours. The right does not pertain to the members of the village community generally. It extends to *adhlápi*.

*Dera Ghazi Khan*.—The record is silent as to whether the amount of the share has any influence on the exercise of the right, which is that, first, of the joint owners ; secondly, of neighbours ; thirdly, of hereditary tenants. It extends to sales, *hiba bil iwaz* and *bai bil wafa* on foreclosure, but not to other mortgages or gifts or to *adhlápi*.

*Jampur*.—The right is proportioned to the share of the pre-emptor. Muhammadan law and Act IV of 1872 are followed. The pre-emptors are, first, the near kindred of the same stock, and, secondly, co-owners. The right extends to *adhlápi*.

The fusion of rural and even tribal custom with Muhammadan law and the law of the British Indian Legislature evidenced by these replies is exceedingly instructive. When it is recollected that the passage from the determination of social forms by relationship to their determination by the mode of enjoying land is probably one of the decisive epochs in the history of human progress, the reply of the Drishaks, even though unsupported by precedent, appears in complete consonance with the probable ideas of a tribe lately, and even now, perhaps, partially, predatory. It recognises the tie by blood to the near kinsmen of the tribe as stronger than the civil nexus of joint-ownership.

## SECTION XVII.

### THE MOOLTAN DISTRICT.

As already said, it is only in the Gurgaon, Rohtak, and Mooltan districts that statements of custom have as yet been prepared subsequently to the receipt of the instructions which issued on the series of questions prepared by me in 1875.

Mr. C. A. Roe, C.S., the Mooltan Settlement Officer, has drawn up a work on the Customary Law of his district, consisting of two parts. Part I is an introduction, explaining the method of compilation, and comprising a summary of the questions and answers, and a commentary stating his opinion on the latter. Part II is a translation of the questions and answers in full. He has proposed that both parts should be printed at length in a separate volume.

This will probably be done; but, for the purposes of this compilation, it is quite sufficient to include Part I only, which clearly states the general results of the enquiries made. The third chapter of this part relates to tenures of land, and treats of chakdárs, adhlápi, and tenants; but here, as in the case of Dera Ghazi Khan, there are good reasons for not excluding the information. The Chakdari tenure has much interest; and it is an advantage to compare what is here said as to *adhlápi* and tenant right with the report on the same subjects from the Dera Ghazi Khan district—a part of the country in many particulars resembling Mooltan, and, in Sikh times, under the same Governor.

For rather different reasons, the fourth chapter, which contains the Customary Law of Alluvion and Diluvion, is also printed below. It would be a pity to mar the completeness of Mr. Roe's general sketch; and his explanation of the origin of the deep-stream rule in the part of the country under consideration is very significant. It is now pretty generally admitted that the deep-stream rule is an evil, which, even where indigenous, some effort should be made to eradicate. The introduction of this rule by direct administrative action shows the strength which the Executive Government could bring to bear upon the development of the customs of the people; and the circumstance that, in the course of thirty years, gradually accumulating experience has

demonstrated the rule itself to be a bad one, goes to inculcate the greatest caution in the exercise of the power of modifying rural institutions which the Government can still, in various ways, apply.

The method and principle of the Mooltan enquiries are sufficiently explained by Mr. Roe; and he has defined the degree of assistance which the Courts of Justice may expect to receive from his record.

CUSTOMARY LAW OF THE MOOLTAN DISTRICT, BY MR. C. A. ROE,  
SETTLEMENT OFFICER.

Provision is made by Chapter C. V. 36 of the Rules under

Record required by  
the rules under the Land  
Revenue Act. the Land Revenue Act (Act XXXIII of 1871) for the preparation of a statement of customs common to a tribe or tribes, or to

a group of villages; but no detailed instructions are given as to the form in which it is to be drawn up, or the legal force to be given to the entries in it. Opposite views have, there-

Different views as to  
its form and effect. fore, naturally been held on these points; one view being that the Settlement Officer, after such enquiry as might be necessary, should draw up a proceeding, stating what customs he considered satisfactorily established according to the definition of a custom given in the rule above quoted, and that this statement would be presumed to be true under section 16 of the Act. The other view was, that, whilst the Settlement Officer should make every effort to obtain correct and intelligent answers to his questions regarding existing customs, he should not give an official *imprimatur* to any record of them; the answers should be left to stand by themselves as originally given, and whilst they would no doubt be valuable evidence, they would carry no technical presumption in their favour: it would be for the Court which referred to them to judge of the value to be given to them in each particular case. The following letter, No. 2195S., dated 2nd April 1879, from the Settlement Secretary to the Financial Commissioner, to the address of the Settlement Commissioner, shows that the latter is the view which has finally been adopted. I quote the letter in full,\* as it will explain clearly the manner in which the present statement has been drawn up.

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\* Here follows the letter, which is omitted, as it has already been printed at page 214 of Vol. I.

2. The present statement has been drawn up in accordance with these instructions.

Present record made accordingly. The answers have all been allowed to stand as originally given;

and I have confined my action to satisfying myself that they are what the people really wished to give, and to noting my own opinion in the statement regarding any particular answer which seemed to be violently opposed to what my own experience would lead me to believe to be the truth. I will heareafter give my opinion regarding the answers generally in an abstract of them under their different headings.

3. The question as to what should be the general scope of

General scope of the enquiry. the enquiry into Tribal and Local Custom enquiry was discussed at length in the correspondence

commencing with a memorandum and set of questions drawn up by Mr. Tupper, C.S., and ending with the expression of the views of Mr. Egerton and Sir Henry Davies referred to by Mr. Lyall in the letter above quoted. There was, I think, a general *consensus* of opinion that the great error to be avoided was the framing of elaborate questions which would probably be utterly beyond the comprehension of the zamindár, and which might attempt to provide rules for a state of things which had very probably never actually occurred, and which most certainly had not occurred sufficiently often to furnish any set of precedents deserving to be called a custom. I have, therefore, in preparing the following statement, eadeavoured to confine the questions to the most common incidents connected with the enjoyment and devolution of property, and the most prominent forms of tenures of land. I have arranged these subjects in the following order:—

#### *Chapter I.—Inheritance.*

Part I.—Heirs, Male.

Part II.—Heirs, Female : Daughter and Sister.

Part III.—Heirs, Female : Widows and Mothers.

Part IV.—Succession in joint and separate holdings.

#### *Chapter II.—Enjoyment of Property.*

Part I.—Powers of proprietors.

Part II.—Adoption.

Part III.—Pre-emption.

#### *Chapter III.—Tenure of Land.*

Part I.—Chakdárs.

Part II.—Ádhlápi.

Part III.—Tenants.

4. The questions on the subjects were drawn up by myself,

Questions how framed  
and answers how obtained.

in consultation with Rai Hukm Chand,  
Extra Assistant Settlement Officer, and  
issued to the Superintendents on 30th May

1875. They were made uniform for all the tahsils, in order to facilitate the compilation of a single Code for the whole district. Meetings of the zamindárs\* were held at the following times and places :—

Tahsil.	Place of Meeting.	Date.	Presiding officer.
Mooltan .	Mooltan .	(Various)	The Superintendent.
Shujahábád .	Shujahábád .	25th, 26th, and 27th July 1875.	M. Lachman Das, Superintendent.
Lodhran .	Lodhran .	1st and 15th November and 1st December 1875.	M. Anant Ram, Superintendent.
	Jelálpur .	6th and 7th January 1876.	
Mailsi .	Mailsi .	29th September to 1st October 1876.	Pundit Janki Nath, Superintendent.
	Kahror .	30th March to 4th April 1877.	
Serai Sidhú .	Serai Sidhú .	1st May 1875 .	M. Pahlad Das, Superintendent.
	Tolumba .	10th and 11th May 1875.	

5. The answers† thus recorded were forwarded to me, and I have translated them as literally as possible ; and I do not think any error has crept into the English version. But the original answers have, of course, been preserved as recorded : they constitute the real statement of Tribal Custom, and it is to them that reference must be made in the case of any doubt arising as to the meaning or the correctness of the English translation. Rather a long time has elapsed since the answers were first submitted to me ; and the main reason of this is, that I was doubtful as to how they should be treated. Whether I should accept the answers as they stood, or should hold a further enquiry into the truth of customs alleged, depended chiefly on the decision to be arrived at by higher authority as to the general nature of Tribal Statements. That decision has now been given ; and I most thoroughly concur in it. I have accordingly accepted the answers as originally recorded, only calling on the Superintendents for further report when the meaning of any answer has appeared obscure, or inconsistent with some previous answer ; but this has not prevented my making informal enquiries on my own account whenever the answers appeared to me at variance with what I believed to be the true state

\* For ascertaining the customs regarding inheritance, the enjoyment of property, and land-tenures.

† Separate meetings for alluvion and diluvion were held at the time and places noted on the papers relating to this subject.

of the case. The length of time for which the papers have been before me has, of course, greatly increased my opportunities for making these enquiries, the result of which I have given in the brief notes I have recorded opposite some of the particular answers, and in the following review of the statement generally. It is, of course, to be distinctly understood that this opinion is in no way an authoritative decision as to the existence or non-existence of a custom; it is merely the expression of my individual belief, and if it should be considered that, from my having been engaged in the settlement of the district for nearly seven years, I am a person who, in the words of clause 4 of section 32 of the Evidence Act (Act I of 1872), would "have been likely to have been aware of the existence of any public right or custom or matter of public or general interest, if it had existed," this opinion of mine will be admissible as evidence under this section like the answers of the zamindar themselves. I have no wish whatever to claim for it any higher authority. This opinion I will now give on the following abstract of the answers, grouped according to the Chapters and Parts mentioned above in paragraph 3 :—

### CHAPTER I.—INHERITANCE.

Part I treats of the Inheritance by Heirs Male. On this subject the following were the questions asked :—

I.—Do all the sons of a lawfully-wedded mother succeed to their father's property on equal shares, or does the eldest take a larger share ?

Heirs Male.—II.—Do sons by different lawfully-wedded mothers inherit *per capita* (*pagvand*) or *per stirpes* (*chundavand*) ?

III.—If one wife is of the father's own caste, and the other of another caste, do their sons inherit equally ?

IV.—If marriage is lawful with the wife of one caste, but unlawful with the wife of the other, do the sons of the latter receive any share ?

V.—Do illegitimate sons receive a share with legitimate sons ?

VI.—Do they, if there are no legitimate sons ?

VII.—Do the sons of a handmaid (*kanizak*) receive any share ?

VIII.—Does a stepson (*pichlag*) receive a share ?

IX.—If a son dies before his father and leaves a son, does this son take a share with his uncles ?

X.—Amongst more distant collaterals, *e. g.*, those connected with the deceased in the fourth and fifth generation, do the heirs of the nearer generation exclude those of the more remote, or do they both share alike?

6. The general reply of the Muhammadans throughout the district is that all the sons share equally.  
Answer I: Son's share.

There is, however, an exception in the case of the *Makhdimas*, or heads of shrines, who usually Muhammadans. take a half share against the one share of each of the other brothers. In a few families of position it is asserted that the eldest son gets a larger share; but most of these say that he does so only with the consent of his brothers. I doubt if any private family could really establish a custom in favour of the eldest son; and in some cases I believe the statement that such a custom exists is simply untrue, and made in order to further the maker's interests in pending disputes. Amongst the Hindús there is a very general concurrence by the many of the subdivisions of the Khatis, that the eldest son takes an extra one-fourth. The custom is not universal; but many undoubted instances are given of its having been followed. Amongst other Hindus the sons all share equally.

7. To question II, with two exceptions amongst the Muhammadans of Serai Sidhú, the unanimous answer of both Muhammadans and Hindus throughout the district is, that the two families inherit *per capita*, or *pagvand*.  
Answer II: *Pagvand and chundavand.*

8. To question III, all the Muhammadans reply that as long as the marriage is lawful according to the "*Shariah*," no regard is paid to caste or tribe; all the sons inherit equally. The general answer of the Hindus is, that marriage with other castes is not allowed, and the issue of such a marriage would get no share. A group of thirty-one families in Mooltan would, however, allow this issue one-third share under certain

Answers IV, V, VI and VII. circumstances. Both Muhammadans and Hindus agree that, where the marriage is unlawful, or where there has been no marriage, the children get no share at all. Question VII, as to the children of a *kanizak*, or handmaid, refers properly to a condition of society which has no existence amongst the peasants of this district, whether Hindus or Muhammadans; and the general answer is, that if there was a lawful marriage, the children succeed; if there was not, they do not.

9. It is unanimously declared that *pichlags*, or stepsons,

Answer VIII: *pich-* can claim no share in their stepfather's  
*lags*, or stepsons. property.

10. In reply to question IX, the Hindus unanimously

Answer IX: Survival of son's share. say that the son of a son who dies before his father is entitled to his own father's

full share. This is the general reply of the Muhammadans also; but both in the Mooltan and Mailsi tahsils there are a considerable number of tribes who declare that they follow the Muhammadan law, and that the son's son is excluded by his uncles. I think the general custom certainly is in favour of his succession, and that the *onus probandi* would rest on those who would assert his exclusion; but I am by no means prepared to say that a custom in favour of this exclusion might not in many cases be satisfactorily made out.

11. As to the succession amongst distant collaterals, there

Answer X: Collaterals. is really no custom; for those who attempt to answer the question admit that no case

has ever occurred; and the example given in the Hindus' reply in Shujahabad is an instance of the succession of a brother and brother's sons, and not of distant collaterals.

### Part II.—Daughters.

12. The second part of Chapter I concerns the rights of daughters, regarding which the following questions were asked?—

I.—Do daughters take a share when there are sons?

II.—Do they when there are no sons?

III.—Do sisters succeed when there are no sons? If so, what is their share with reference to daughters?

IV.—If daughters are excluded by male collaterals, must the latter be within a particular degree of relationship?

V.—Are unmarried daughters entitled to a share?

VI.—If a daughter live with her husband in her father's house, does she take a share with her brothers? If there are no brothers, does she exclude collaterals? If she does not exclude them, does she get any share?

VII.—When daughters are entitled to a share,—then if one daughter lives with her father whilst another resides in another village, is there any difference in their shares?

VIII.—When a daughter has property of her own, does it descend to her husband or to her father's family?

**13. All the Hindus say that a daughter takes no share**

Share when there are sons. when there are sons. Most of the Muhammadans say the same; but there is a very

general agreement that a daughter may take whatever may have been given her by her father as a marriage portion; and two families in Mooltan, two in Lodhran, and three in Serai Sidhú declare that they follow the Muhammadan law. I doubt if there are many families in which the law is strictly followed; but at the same time I think that much more regard is paid to its spirit than is usual in other parts of the Punjab, and that, whilst the daughter may not get her exact share, it is very common, at least amongst the higher families, for a provision to be made for her, either on her marriage or some time during the lifetime of her father, corresponding more or less fairly with the share which the Muhammadan law would have given her.

**14. As to the rights of daughters when there are no**

Share when there are no sons. sons, the 82 families of Mooltan, the Pathans of Shujahabad, the Kureshis of

Lodhran, the Pathans and Kureshis of Kahror and half of Mailsi, say that they follow Muhammadan law; and the Khaggas of Mooltan, the Drigs of Shujahabad, the Pathans of Lodhran, declare that daughters altogether exclude collaterals. The Rans of Mooltan, the Núns of Shujahabad, and the Serai Sidhú Máhammadans generally, say that they exclude them, unless they, the daughters, have married into another tribe. Some tribes of the Mooltan tahsil and the Kureshis of the eastern half of Mailsi say that daughters are excluded by brothers, and brothers' sons or grandsons; whilst 16 Ran families of Mooltan tahsil, most of the Shujahabad Muhammadans, and the Sayads of Lodhran, say that they are excluded by all collaterals. The Joyahs and Beloches of Mailsi say there is no real custom; and I think this answer would be tolerably correct for the greater part of the district. It is obvious that in the succession of daughters and collaterals custom will depend mainly on the particular circumstances of each case. Where a village has been held for generations by men of the same tribe, it is natural that cousins should count as brothers, and inherit a man's property to the exclusion of his daughters. On the other hand, when a settler goes out into the waste and assists in founding a new village, the daughters, who have accompanied him or been born in the new house, would have a much greater right to his property than collaterals whom he may have never seen. As far as it is possible to speak of a general custom of the

district, I should say that it is this; in the higher families, and in newly-settled tracts, the succession of daughters is very general; but in the old villages they are excluded by near collaterals, but not by the more distant ones, unless they have married into another tribe. The Hindus of the city of Mooltan and those of Serai Sidhu limit the power of exclusion to brothers and other descendants; those of Mailsi extend it somewhat further, whilst those of Lodhran and of the villages of the Mooltan tahsíl put no limit at all. The Shujahabad Hindus say that custom is not uniform.

15. Both by Muhammadans and Hindus the sisters are placed generally next after daughters, and succeed or are excluded according to the rules described in the preceding paragraph.

16. Those who follow Muhammadan law make no distinction between married or unmarried daughters. Unmarried daughters. Other Muhammadans only allow the latter maintenance and a marriage portion; and this is the answer of the Hindus. The Shujahabad Muhammadans, however, say that if such a woman lives all her life with her brothers, she is entitled to a share, or to succeed them on a life-interest.

17. When a daughter lives with her husband in her father's Khanah dámáds. house, both the Muhammadans and Hindus of Shujahabad say that "she ought to get something, and that she may inherit whatever her father may have given her." But all the others say that she has no rights superior to that of an ordinary daughter; nor does a daughter's residence or non-residence in the same village with her father increase or decrease her rights.

18. Both Hindus and Muhammadans throughout the district agree that any property a daughter Succession to daughter's property. may have inherited passes to her husband's, and not to her father's, family.

### *Part III.—Widows.*

19. Regarding the rights of widows, the questions were—

I.—Does a widow succeed to her husband's property when there are no sons; or is she only entitled to maintenance? Does she get anything if there are sons?

II.—If she succeeds to a share in a joint property, can she claim partition?

III.—Is there any distinction in her powers over the ancestral and acquired property of her deceased husband?

IV.—Can she alienate this property ?

V.—If a man leave both a widow and mother, will both inherit ?

VI.—If there are widows of different castes, how do they share ?

VII.—Can a widow alienate her *stridhan* ?

VIII.—Can she alienate her husband's moveable property ?

IX.—Does she forfeit her rights by unchastity or remarriage ?

X.—If she has two families, do they both inherit the *stridhan* ?

XI.—Can she give her daughter a marriage portion ?

20. The 82 families of Mooltan and the Patháns of Lodhran say that they follow Muhammadan law ; Their share.

and a few tribes in these two tahsíls allow the widow a maintenance only. So do the village Hindus of Mooltan ; but I rather doubt the correctness of their statement. All others, both Hindus and Muhammadans, say that where there are no sons the widow succeeds on a life-tenure, and whilst there are sons she is entitled to maintenance only, except in Serai Sidhu ; and by some of the Muhammadans of Mailsi it is admitted that if she succeeds to a share in a joint property she can claim partition ; and it is universally stated there is no distinction between her power over ancestral and acquired property.

21. The 82 families of Mooltan, and a few others in the same tahsíl, say that the widow can alienate ; Powers of alienation. but all others, both Muhammadans and Hindus, say she cannot do so, except in case of necessity, when the collaterals refuse to advance the money required.

22. Except the 82 families in Mooltan who follow Muhammadan law, all, both Muhammadans and Hindus, say that the widow and mother share alike. With the Hindus, marriage into a different caste is generally prohibited ; but if it is allowed, and with all the Muhammadans the rights of both the widows are equal. The 82 families say that the widow retains her rights under all circumstances ; and the Pathans of Shujahabad deny that she loses them on remarriage. All the others, both Muhammadans and Hindus, say that unchastity or a second marriage entails forfeiture of all rights.

Widow and mother. Widows of different castes. Remarriage or un-chastity.

23. It is universally admitted that a widow has complete control over her *stridhan*, and that she can alienate it if she likes. Amongst the Muhammadans, if the widow remarries and has a second family, all her children by both husbands inherit her *stridhan*. As the Hindus do not recognise a second marriage, there can, of course, be no real custom on this point amongst them.

24. Some of the Muhammadans of the Mooltan tahsil deny the widow's power to alienate moveable property; the others, and those of Shujahabad and Lodhran, give her the power apparently without any restriction; whilst those of Mailsi and Serai Sidhu say she can alienate only "to meet reasonable expenses." This last is the view generally taken by the Hindus; but a number of families in the city of Mooltan restrict her power to acquired property, whilst those of the Mooltan villages deny the power altogether. I much doubt if there can be said to be any real custom on this point. It is universally admitted that a widow can give a part of the moveable property to her daughter as a marriage portion, and the Muhammadans of Mooltan and Shujahabad would appear to extend this power to immoveable property.

#### *Part IV.—Association and Separation.*

25. The 4th Part of the chapter on Inheritance relates to the effect of association and separation on the shares of the sons. The questions put were—

- I.—Is there any difference in the shares of worthy and unworthy sons?
- II.—Or in those of energetic and lazy sons?
- III.—If some brothers separate, whilst the others remain joint, and one of the latter die childless, is he succeeded by his joint brothers only, or by all?
- IV.—So, too, if the separated sons are the children of one mother, and the joint sons the children of another?
- V.—Where some sons of one wife remain joint with some sons of another wife, if one of them dies childless, is he succeeded by (i) his full-brothers, (ii) by his joint half-brothers, or by all his brothers alike?
- VI.—If a man divides his property, reserving a share for himself, and continues to live joint with some of his sons, does his reserved share descend to them alone, or to all his sons alike?
- VII.—If the father does not reserve a share, but, conti-

nuing joint with some sons, acquires more property, who will inherit this ?

**VIII.**—There are three sons. One takes his share and separates ; the father continues to live joint with the other two ; one of the latter dies childless : do both his brothers succeed equally ?

**IX.**—If separate property is put into the common stock, is it taken out again before partition ?

**X.**—If a partition is made, and, another son is born subsequently, can the partition be set aside ?

**26.** It is the universal custom for all sons to share alike Personal qualifications. without reference to their personal character or qualifications.

**27.** Nor is any regard generally paid to the fact of brothers. Joint and separate brothers living jointly or separately. In the cases contemplated in questions IV and V, the 82 families of Mooltan say that the full-brothers succeed to the exclusion of the half-brothers ; and some other Muhammadans of this tahsil say that this is the case with regard to acquired property ; but the other Muhammadans and all the Hindus (except some in the city of Mooltan) assert that even here all the brothers succeed equally ; and it is universally admitted that they do so in all the other cases suggested in the questions. Where, however, a son has remained joint with his father and assisted him in acquiring new property, it is generally agreed that he alone should inherit it.

**28.** Where one of the shareholders has put separate property into the common stock, this is always taken out and reserved to him before partition. If another son is born subsequently to partition, all agree that the former partition may be set aside ; except the 82 families of Mooltan, who say that this cannot be done without the consent of all the heirs.

## CHAPTER II.—ENJOYMENT OF PROPERTY.

**29.** This Chapter is divided into Part I, Powers of a proprietor over his property ; Part II, Adoption ; and Part III, Pre-emption.

Enjoyment of Proper-ty. Questions asked. In the 1st Part the questions were—

I.—Can a man give away his property if he have sons ?

II.—Can he do so if he have no sons ?

III.—Can a father exclude his sons ?

IV.—Can he, in dividing his property, alter the customary shares ?

V.—Can he give a part to his daughter, sister, or son-in-law?

VI.—Can he make a gift on his death-bed?

VII.—Can a man who has natural heirs give away his property in charity?

VIII.—Can he, on partition, reserve a share for himself?

IX.—Can he give away his property merely to spite his heirs?

X.—Is a gift, unaccompanied by possession, valid?

Abstract of answers. 30. The replies to these questions may be grouped thus:—

I.—It is universally admitted that a father may (i) reserve to himself a share on partition; (ii) give a portion of his property to his daughter or son-in-law (the Hindus of the city of Mooltan would restrict the power to acquired property); (iii) or give it away in charity (but the Lodhran men, or in charity. both Hindus and Muhammadans, only allow him to give away one-fourth).

II.—That he may alter shares when dividing his property Power of altering is denied by the general body of Muhammadans in the Mooltan tahsil, by both shares, Hindus and Muhammadans of Lodhran, and by those of Serai Sidhu as regards ancestral property; but his power to do this is admitted by all the others. Those who deny the power of altering a son's share, of course deny the power of excluding and exclusion. him altogether; whilst of those who admit the former power, the Hindus of Mooltan city and the Khatris of Shujahabad do not allow exclusion from ancestral property; and the Hindus of the Mooltan villages only allow it by a gift in favour of another heir. All others profess to allow complete exclusion.

III.—Where there are no sons, the Hindus of Mooltan General power of gift allow only gifts to a daughter, or of acquired property; where there are no sons. and the general body of Muhammadans of this tahsil do not allow them as long as there are collaterals within three degrees. All the other tribes impose no restriction.

IV.—Where there are sons, the Hindus of the Mooltan General power of gift villages restrict the power of gift to religious purposes; where there are sons. a part of the city Hindus and the Khatris of Shujahabad restrict it to acquired property; and the gift of a part only is allowed by the general body of Muhammadans of Mooltan, by both Hindus and Muhammadans of Lodhran, and by Sirdar Muhammad Kichi of

Mailsi. All others apparently allow an unrestricted power of gift.

V.—A gift purely to spite heirs is disallowed by all  
Gift to spite heirs. Lodhrans, the greater part of Mailsi, and by the general body of Muhammadans of Mooltan. The others take no account of the motive which may prompt the gift.

VI.—A death-bed gift is disallowed by the Shujahabad  
Death-bed gift. men and by the other Muhammadans of Mooltan.

VII.—All Mooltan and Serai Sidhu, and the Muhammadans of Mailsi, require a gift to be accompanied by possession ; but the others say this not necessary.

31. These answers assert a far greater power of gift  
Opinion of Settlement than is generally recognised; and no  
Officer. doubt in many cases they are rather the feelings of the speaker as to what ought to be than the exposition of existing and definite custom ; and, indeed, there is very often the addition to the reply, "but no case has hitherto occurred." Still, several of the answers are supported by a fair number of examples ; and I have noticed repeatedly in cases which have come before me judicially that, when a gift has been pleaded, the reply has been not, as I should have expected, that the gift was contrary to law or custom, but that, as a matter of fact, it had never been made. I am by no means prepared to assert that a custom can be proved in favour of all the very wide powers of gift asserted in the above answers; but I certainly think that this power is far more extensive here than in most other parts of the Punjab. This I attribute to two causes :—Firstly, the proximity of the district to the frontier; and the existence of a dynasty of Pathan Nawabs down to 1818 has kept custom much more in accordance with Muhammadan law. Secondly, the fact that nearly all the villages are held on possession ; that, except in some parts near the rivers, true village communities are almost unknown; that the well is the true unit of proprietary right ; and that property generally has been acquired comparatively recently : all this tends to weaken the idea that a man holds his land merely on a life-interest in an entail, and strengthens the idea that his holding is really his own property to do what he likes with.

It may, perhaps, be doubted if there is a custom in the strictly legal sense of the word on any of the points contained in the answers ; but, as remarked by the Financial Commis-

sioner, they at any rate show the existing state of feeling from which custom may be expected to grow ; and I think that this feeling is generally that, whilst the exclusion of sons from ancestral lands, or a gift to a rank outsider, would be looked upon with great disfavour, other gifts within the limits of Muhammadan law would not be objected to. At any rate I do not think they should be summarily set aside on the ground that they are contrary either to local custom or to the "custom of the Punjab."

### *Part II.—Adoption.*

32. Adoption is not practised by the Muhammadans, except in Lodhran ; or, apparently, by the Brahmans and Aroras of Mailsi. Amongst the other Hindus no particular ceremonies are necessary ; but the adoption must be made "in the presence of the brotherhood ;" and it is generally said that the adopted son must be of the same stock as his adoptive father : the Lodhran Hindus add that he must be five years old. The Mooltan Hindus say that an only son cannot be adopted ; but the others make no restriction. If a natural son is born after the adoption, both he and the adopted son share equally. In all cases the adopted son loses his share in the property of his natural father.

### *Part III.—Pre-emption.*

33. The right of pre-emption exists universally ; and it is said to descend in the following order :—

#### *In Mooltan.*

1. Co-sharers.
2. Neighbours.

#### *In Shujahabad.*

1. Own brothers.
2. Co-sharers (descended from a common ancestor).
3. Álá maliks.
4. Neighbours.
5. Khewatdars.

#### *In Lodhran.*

1. Own brothers.
2. Associated kinsmen.
3. Alá maliks.
4. Neighbours.

5. Khewatdars.
6. Non-khewatdars.

#### *In Mailsi.*

1. Own brothers.
2. Male collaterals.
3. Neighbours.
4. Álá maliks.
5. Tenants.

#### *In Serai Sidhú.*

1. Descendants of common ancestors.
2. Co-sharers.
3. Neighbours.
4. Other proprietors.

### CHAPTER III.—LAND-TENURES.

34. This chapter is intended to record briefly the customs relating to the occupancy of land. It is divided into three parts : Part I.—Chakdárs and Kasúrkhwárs ; Part II.—Adhlápi customs ; Part III.—Tenants in general.

#### *Part I.—Chakdars and Kasurkhwárs.*

35. The questions regarding chakdars were—

I.—What is a chakdar; and how does he acquire his rights?

II.—What are his rights and powers?

III.—What is a kasúrkhwár; and how does he differ from a chakdár?

IV.—What does the original proprietor take from the chakdár?

V.—What is a “lichhkhwár”?

The answers state that the chakdár acquires his rights either by a grant from the State, or by purchase from the original owners. He is generally called a sub-proprietor, and pays a *hak zamindari*, which is usually half a seer in the maund to the original zamindár, or *álá malik*; but he always possesses the full powers of a proprietor over his own holding; and very often when there are no *álá maliks*, the term “chakdár” is applied indiscriminately to all well-owners.

Kasurkhwar. The “kasárkhwár” is the taker of the *kasur*, or what remains over after deducting the Government and cultivator’s share of the produce, when the revenue is paid in kind. He takes no part in the cultivation or payment of revenue. The “lichhkhwár” is, similarly, the taker of *lichh*, which is defined to be “the *malikana* taken from a tenant who pays the revenue.” The position of all these men is discussed at length in my Final Report.\*

#### *Part II.—Adhlápi.*

36. *Adhlápi* is the custom by which a man sinks a well in another’s land, acquiring thereby a share in the land and giving the other a share in the well. The questions regarding it were—

I.—What are the usual shares? Who bears the cost? Is the agreement verbal or written?

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\* Further information about the chakdári tenure is given in Vol. III.

II.—Does the custom prevail with regard to kutchá wells ?  
 III.—Who bears the expense of breaking up waste, of the wood-work of the well, and of erecting farm buildings ? Who pays for the repair of these, and of the well itself ?  
 IV.—If a butahmár tenant sinks a well, can the proprietor take half the land for his own cultivation ?  
 V.—Does the original proprietor take *hak zamindári* ?  
 VI.—Does pre-emption prevail in *adhlápi* wells ?

The replies show that *adhlápi* is confined to masonry wells. The shares are what may be fixed by agreement ; but they are generally half and half. In Shujahabad it is stated that the sinker generally cultivates the whole well, and has a right of occupancy in the half which he does not hold as proprietor. Sometimes he pays *lichh* on the whole well ; and sometimes he pays nothing on his own half, and ordinary tenant rates on the other half. Agreements may be either verbal or written ; generally they are the former. *Hak zamindari* is not usually paid unless specially agreed on ; but an installation fee, called in Lodhran *lunghi*, and in Mailsi *nazarana*, is sometimes given. The sinker bears all the original cost of sinking the well, erecting its wood-work, farm buildings, &c., and preparing the ground for cultivation ; but subsequent charges under these heads are borne by the parties according to their shares. Except in Shujahabad, it is stated that, even when a butahmar tenant sinks a well on *adhlápi*, the proprietor can take half for his own cultivation.

The right of pre-emption does not extend to interference with the sinking of a well, but it comes into force if the original proprietor wishes afterwards to sell his share ; and in Shujahabad it is stated that it then belongs, not to the partner in the *adhlápi*, but to the other neighbours ; but I much doubt this.

37. When one man takes water from another's water-course the share of the produce which he pays for it varies greatly. It is called *athog* (one-eighth) in Mooltan, *kasur* in Shujahabad, and *abiana* in the other tahsils : the rate generally is one-eighth in the first tahsil, from 1 to 5 seers per maund in the second, and half the *mahsul* (*i.e.*, from “ $\frac{1}{6}$ th to  $\frac{1}{2}$ th” of the gross produce) in Lodhran and Mailsi. In Serai Sidhu there are very few canals, and the custom is almost unknown.

### *Part III.—Tenants in general.*

38. The generic terms for tenants are “*muzárah*,”

**Names for tenants.** "kashtkar," "riáyá," and "rahak;" but sometimes the latter term is applied to a mere farm-labourer. "Butahmar," "múndhimar," "godkash," "wahulahmar," are breakers up of waste, and are considered to have rights of occupancy. "Lichains" in Mooltan and Serai Sidhú are men who work with the cattle of another; and "belís," "karindahs," and "wahiwahs" are mere farm-labourers. In Serai Sidhú adhlápidars are known as "muzarah taradadis;" and it is said that there is a class known as "muzarah jumahi," who are really sub-proprietors.

**39. Tenants,** who are either in name or in reality sub-  
**Rights of tenants.** proprietors, have, of course, their own rights; but as regards ordinary tenants, whether with or without occupancy rights, the custom is declared to be as follows. They cannot—

I.—Sink a kutchha well,

II.—Build a dwelling-house,

III.—Cut trees for the repair of their houses or well-gear,

IV.—Plant trees,

without the proprietor's consent.

V.—If they buy wood for the repair of their well-gear, they may remove it on ejectment; but they may not remove the materials of their house.

VI.—They have no claim to the fruit of trees of spontaneous growth. If they water trees near their wells, what they will get depends on special agreement.

VII.—They may dig watercourses and erect dams; but they acquire thereby no right of occupancy.

VIII.—The tenant is responsible for the whole of the cultivation, and has to give "chers" and clear the "kassis;" but in Mailsi the latter work is generally done by the proprietors.

IX.—A tenant cultivating indigo cannot be ejected as long as the plant remains in the ground; otherwise there are no special customs relating either to ejectment or the raising of rent within the term of settlement.

X.—A tenant may use the manure of his cattle for his own lands: but he may not sell it, nor may he on ejectment remove his dunghill. In Serai Sidhu, however, it is said that he may do this; and that manure belongs to the owners of the cattle, and not to the owners of the land.

#### CHAPTER IV.—CUSTOMARY LAW OF ALLUVION AND DILUVION.

40. There are three rivers on which alluvion and diluvion

**Extent of river action.** takes place, *viz.*, the Rávi, running entirely through the Serai Sidhu tahsíl in the north of the district ; the Chenáb on the western side, having on its left bank the Serai Sidhu, Mooltan, Shujahabad, and Lodhran tahsíls of Mooltan, and on its right bank the Muzaffargarh and Alipúr tahsíl of Muzaffargarh ; on the south the Sutlaj, having on its left bank the Bahawalpúr State, and on its right bank the Mailsi and Lodhran tahsíls of Mooltan.

**41.** The customs which prevail on the above river were recorded at public meetings of the lambardárs and representatives of the villages on both banks, held under the presidency of Rai Hukm Chand, Extra Assistant Settlement Officer of Mooltan, and attended by the Settlement Superintendents of all the tahsíls affected. The meetings for recording the Chenáb customs were also attended by Khan Ghulám Murtaza, Extra Assistant Settlement Officer of Muzaffargarh. The various meetings were held at the following times and places :—

For the Rávi,—at Serai Sidhu, on 8th February 1878.

For the Chenáb—(i) at Nawábpur, on 25th April 1876.

(ii) at Shujahabad, on 27th May 1876.

For the Sutlaj—(i) at Lodhran, on 1st December 1877.

(ii) at Mailsi, on 1st January 1878.

A record of the proceedings was drawn up separately for each meeting ; the customs were recorded in the form of question and answer ; a list of the village representatives present, with their signatures, was added to each, and attested by the Superintendents : and finally, the order was passed by the Extra Assistant Settlement Officer that the statement should be incorporated with the other records of Customary Law prepared at the present settlement.

**42.** The first question put to the villagers was—“ What

**Question 1.—General custom, give-and-take.—** is the general custom of alluvion and diluvion ?” “ Is the ‘give-and-take’ (*len-den*), or the ‘deep-stream’ (*bándbannah* or *dhár-kalan*) rule followed ?” That is, when land is gradually washed away by diluvion from a village on one side of the river and added by alluvion to a village on the other side does it continue to belong to its old proprietors ; or is the “deep-stream” the boundary of proprietary right ? To this the answer was, that the general custom on all the rivers is the “give-and-take” rule (*len-den*) ; that is, the land continues to belong to its former proprietors, but to this rule there are exceptions. On the left bank of the Rávi there

On the Ravi.

are 46 villages affected by river action.

They may be divided into three groups—

(1) the villages near Tulamba, from Daluan on the borders of the Montgomery district to Baghdad at the commencement of the Sidhnai Reach, containing 28 villages (of the left bank); (2) the Sidhnai Reach, from Baghdad to Serai Sidhú, containing 5 villages; (3) from the Sidhnáí to the Chenab, 13 villages. All the villages of the first two groups, including, of course, those on the opposite bank, follow the deep-stream rule; but in the second group the banks of the Sidhnai are so straight and permanent that changes hardly ever occur. The third group, with the single exception of Gulpúr Panjírah, follows the "give-and-take" rule. Leaving the second group out of consideration, we find that 29 of the Ravi villages follow the "deep-stream" and 12 the "give-and-take" rule. The large number of villages following the former rule is somewhat surprising; but the numerous instances given appear to prove clearly that this is now really their custom, the origin of which will be noted hereafter.

43. On the Chenáb the exceptions in favour of the deep-

On the Chenáb.

stream are much less numerous; and what

there are appear to be based mainly on judicial decisions, or agreements specially drawn up in order to settle disputes. Out of the 76 Chenáb villages of Serai Sidhú and Mooltan, 5 villages only, and out of the 31 villages of Shujahabad and Lodhran, none follow the deep-stream rule.

44. On the Sutlaj there are 94 villages in the Mailsi

On the Sutlaj.

tahsíl, and 30 in Lodhran, in all 124,

affected by river action. Of these, 19 in the former and 13 in the latter, in all 32, follow the "deep-stream," against 92 who follow the "give-and-take" rule.

45. In the whole district, therefore, the "deep-stream"

General rule of the rule is followed by 71 villages (including those of the Sidhnáí Reach), and the and-take" rule. "give-and-take" rule by 210 villages.

It is somewhat strange that the Ravi—a comparatively small river, passing through villages included in the same district—should be the one on which the "deep-stream" rule chiefly prevails; whilst, on the broad rivers of the Chenab and Sutlaj villages, which belong to a different district, and on the Sutlaj to a different State, should follow the "give-and-take" rule. I think that the latter rule originally prevailed

Origin of the "deep-stream" rule. universally; and that the "deep-stream" rule has grown up mainly, if not entirely, under our rule. That this is so is proved by the early Settlement Reports; for Mr. Edgeworth, Commissioner of Mooltan, in paragraph 32 of his No. 223, dated 22nd July 1850, reporting the first summary settlement of the Serai Sidhú and Mooltan tahsils writes as follows:—

"The custom hitherto obtaining along these rivers, the Ravi and Chenab, regarding the right to increment, appears to be that the land thrown up is considered as belonging to the estate opposite, from which land may have lately been abraded. If abrasion had formerly taken place on the side of the present increment, it is considered as a restoration; and belongs to the owner of the estate on that side. *This custom is productive of much inconvenience and endless disputes. I should strongly recommend the adoption of the custom obtaining throughout the Gangetic provinces, viz., of the main stream being the boundary.*"

46. The orders of the Board of Administration on this introduced at the first were conveyed in paragraph 8 of their summary settlement. Secretary's No. 1812, dated 12th September 1850, in the following words:—"The Board authorise your laying it down as a rule, giving due notice, by proclamation and personal communication through the tahsildars, that for the future, as in the Gangetic Provinces, the main stream of the river should be the boundary in all cases."

47. What may be the precise legal effect of this order. Legal effect of these it is rather hard to say. No doubt, under orders. the Indian Councils Act it had the force of law; for it was as distinct and formal a piece of legislation as the Board ever attempted. But, notwithstanding the orders for the general promulgation of the new rule, I fancy that it remained to a great extent a dead-letter. No doubt it was known to the officers in whose time it was issued, and influenced them in their decision of cases; and these again influenced the custom; but I have found no instance, even in these cases, of the Board's order being quoted as a formal and authoritative law; and I imagine that it certainly cannot be held to be law now; for, not only does the new Alluvion and Diluvion Act distinctly say that local custom is to be followed, but the Board's order is by implication repealed by the Punjab Laws Act (Act IV of 1872); for existing orders are only confirmed as far as they regard those subjects on which the Local Government is empowered by the Act to make rules; and alluvion and diluvion is not one of these. I think, therefore, that the custom is really as stated in the

present record, and that it should be followed, except where it can be shown that a different custom has hitherto prevailed.

48. In villages which follow the "deep-stream" boundary,

Shares in land thrown up. land gained by alluvion is divided amongst the villages opposite which it is thrown up according to their old boundaries; but inside the villages only those proprietors take a share in the new land whose holdings adjoin the river.

49. The second main question regards the law of avulsion.

Question 2.—Avulsion. Does land transferred bodily, so as to be capable of identification, from one side to the other, continue to belong to its original proprietors, or to the village opposite which it is thrown up? Of course in the villages which follow the "give-and-take" rule the land continues to belong to its original proprietors. In the other villages the "deep-stream" rule is followed with reference to this land also; except on the Ravi, where land transferred by avulsion continues to belong to its original proprietors. This is another proof of the extraneous origin of the "deep-stream" custom. Were the latter rule really a natural custom, we should expect to see it followed with regard to all lands; but as it is only the creation of our own rules, the exception in favour of changes by avulsion has been introduced, partly because it is a provision of the Bengal Regulation XI of 1825, and partly because it was in harmony with the general feelings of the people, enabling them to a great extent to follow their old real custom, the "give-and-take" rule.

50. All new land formed in the bed of the river is regu-

New land in river bed. lated by the ordinary custom by which the adjoining villages are governed.

51. Villages which are entirely washed away and after-

Villages entirely washed away. wards restored will, in all cases on the Ravi and Chenab, belong to their original proprietors; and so they will on the Sutlaj, if they are restored on the side to which they originally belonged. But if an original Mailsi village is restored on the Bahawalpur side, and *vice versa*, it is, in the villages which follow the "deep-stream" rule, governed by the ordinary custom; and the original proprietors lose all rights in it.

52. In answer to the question what would be done if the

Case of two equal streams. river divided into two streams of equal size, all the villages replied that no such case ever had, or ever could, occur. One stream must always be greater than the other; and if both were apparently equal,

the one in which the current was the swifter would be considered the main stream.

53. The enquiry into the custom regarding the rights of *Lands of maurúsís.* *maurúsís* in land submerged and restored, ordered by the Settlement Commissioner's No. 25, dated 27th July 1877, and by the Financial Commissioner's Book Circular XXI of 1877,\* has been carried out as completely as possible. When the question was put

\* BOOK CIRCULAR NO. XXI OF 1877.

*Financial Commissioner's Office ;  
Lahore, the 3rd October 1877.*

To

ALL COMMISSIONERS OF SETTLEMENT  
AND SETTLEMENT OFFICERS.

The accompanying circular, addressed by Major Wace, Officiating Settlement Commissioner, to the Settlement officers subordinate to him, relating to the right of occupancy-tenants to lands submerged by fluvial action and subsequently restored, is herewith circulated for the guidance of all Settlement Officers, as the Financial Commissioner entirely concurs in the instructions therein contained.

By order,  
W. M. YOUNG,  
*Settlement Secy. to Financial Commr., Punjab.*

*Copy of a Circular letter No. 25 S., dated 27th July 1877, from Major E. G. WACE, Officiating Settlement Commissioner, Mooltan and Derajat Divisions, to all Settlement Officers.*

I have the honour to request your attention to the subject dealt with by the decisions of the Chief Court noted in the margin. You will see from those *Punjab Record: Chief Court, Civil Judgments, Nos 19 and 83 of 1876; and 59 of 1877.* decisions that it is now a fairly well-established point of law that, in the absence of a well-established custom to the contrary, the submersion of a hereditary tenant's holding by fluvial action, and the consequent suspension of the cultivation, does not of itself determine his right of occupancy; but that, on the river's receding, and the land again becoming culturable, the hereditary tenant's right survives as effectively as that of the proprietor who directly engages with Government for the revenue.

2. It is, of course, necessary that the holding should be identifiable; and in the case last above named, the identification was effected by the means of the Settlement Maps and Field Register.

3. In view of the principle of law thus established, it is very important that the Codes of Customs and Administration papers of those tracts now under settlement which are subject to fluvial action should state what is the custom on this point. I, therefore, request you will take measures to this end, and that you will notice the subject in your final report.

4. The point is precisely one of those on which a detailed examination of previous records is likely to throw much light; and the statement of the principal persons belonging to the owner and tenant classes should also be recorded.

5. If you find that the practice in certain villages does not agree with the custom observed in the majority of the adjacent villages, you should not merely on that account discredit the exceptional practice. The past history of adjacent villages has often differed much; and the strength or weakness of a tenant's privileges justly depends on the circumstances out of which it has arisen and through which it has continued.

Whatever can be shown to be the well-established custom of a village, or of a small tract, is as much protected by section 7 of the Punjab Laws Act as those that prevail over a wider area.

broadly at the general meeting, the answers obtained were of little value ; for, as a rule, all the tenants asserted that the rights survived, and all the proprietors asserted that they did not. I, therefore, directed the Superintendents to draw up a list of the tenants entered in the records of the regular settlement as having rights of occupancy in villages affected by river action, to ascertain how much of their land had been cut away and restored since that settlement, and who had taken possession of it. They were also to record the statements of the proprietors and maurúsís in each village as to what they considered the custom.

**54.** The result of this enquiry is embodied in the general

**Result of enquiry :** record of the customs of each river. On  
**On the Ravi.**

the Ravi there have been no instances of such land being cut away and restored. There are no villages in which maurúsís held land at the last settlement ; but in one the maurúsís entirely abandoned their holdings. Of the remaining 18 no land has been lost in 11 villages, and in seven the land lost has not yet been restored. There is no evidence as to customs, for both tenants and proprietors say merely there are no disputes. On the Serai Sidhu part of the Chenab there are six villages with maurúsís. In two no land has been lost ; in one it has been lost and not yet restored ; in the remaining three it has been restored and taken by the proprietors without any objection by the tenants.

**55.** On the Chenab in Mooltan tahsíl there were ^10

**On the Chenab.** villages with maurúsí tenants ; but in one of them the tenants are practically sub-

proprietors, whose rights have been defined by Judicial decrees ; and their practice cannot be said to affect the general custom. Of the remaining nine villages cases of maurúsís land being cut away and restored have occurred in four only, and in all these there have been disputes ; in two of which the tenants recovered their lands, whilst in the other two the proprietors were victorious. Of the five villages in which no case had occurred, in three both proprietors and tenants agreed as to the survival of the tenant's rights ; in a fourth they agreed that their rights ceased ; whilst in the fifth the rights were claimed by two tenants (and allowed by the Superintendents) and repudiated by the others. In Shujahabad cases of restoration had occurred in seven out of the 12 villages affected. In four of these the land had been taken by the proprietors, and in three it had been taken by the tenants, without any opposition on either side. Of the five in

which no instance has occurred, in four both proprietors and tenants agree that the tenant's rights survive; in the fifth there was a dispute, which was decided by the Superintendent in favour of the tenants. In Lodhran there are six Chenab villages with maurúsís. In two only have their lands been cut away and restored; and in both instances they were taken by the proprietors.

56. In Lodhran there are 15 Sutlaj villages with maurúsís; but in two only have cases actually occurred. On the Sutlaj. In one the land was taken by the proprietor, and in the other by the tenant; and the Superintendent says that there is no general agreement as to the custom; but in the villages from Kot Imám-uddin to Khanwah both proprietors and tenants have recorded that such land shall go to the proprietor, whilst in the remaining villages they have recorded that it shall go to the tenant. In Mailsi there were maurúsís in 26 villages; in all of which there have been cases of diluvion. In 22 cases the land has been wholly or partly restored; and in 19 of these it has gone to the proprietors. In three cases it has gone to the tenants; in one instance without objection, in the other two after a dispute and an award by the Superintendent. In all four cases where the land has not yet been restored both parties agree that it will go to the proprietor.

Opinion of Settlement Officer. 57. I think that it may be held from these reports that—

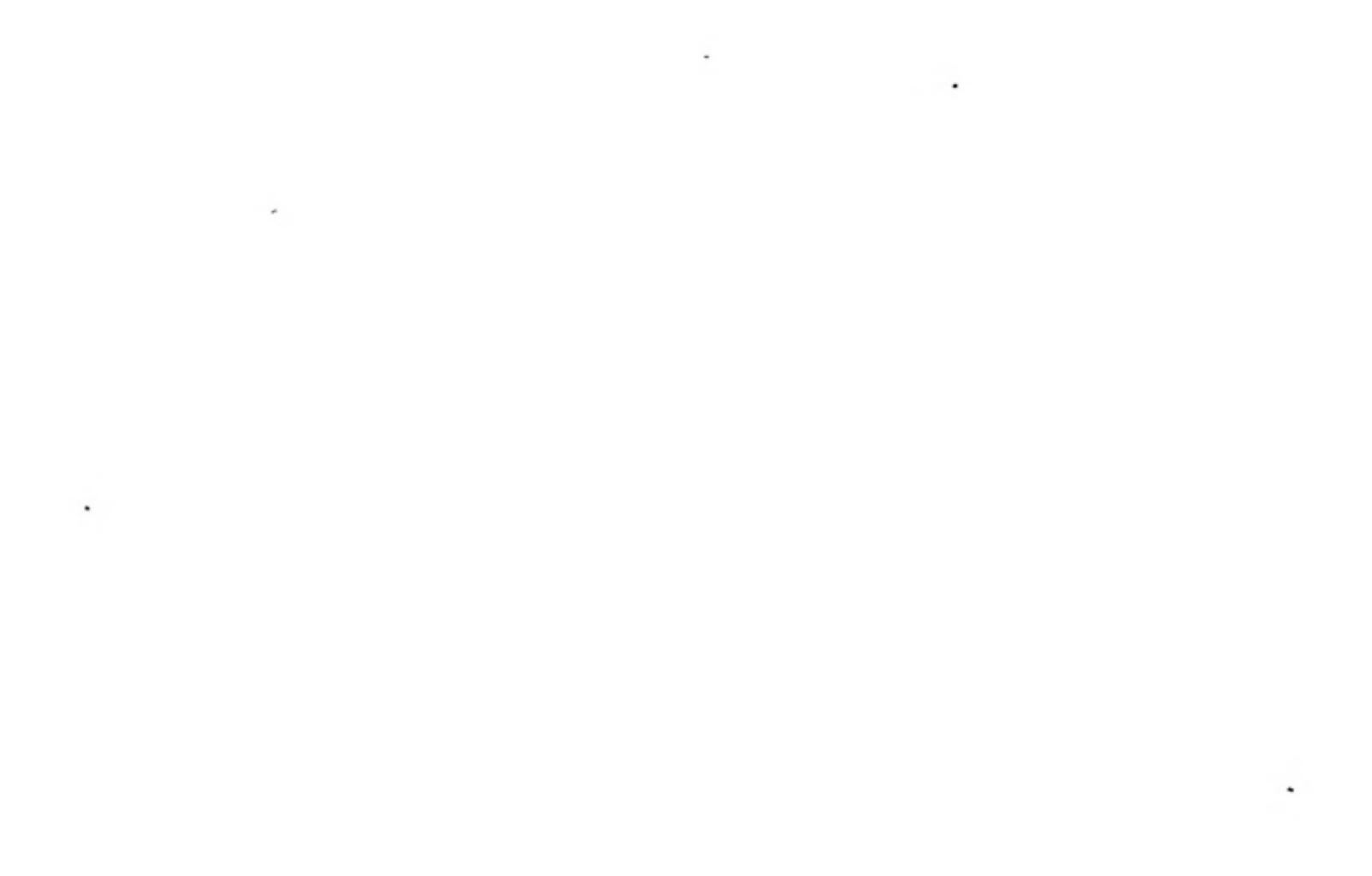
- (i) On the Ravi there is no custom at all.
- (ii) On the Chenab the precedents are neither sufficiently numerous nor uniform to constitute a general custom, or even customs for groups of villages; but the majority of the precedents of restoration are rather in favour of the proprietors.
- (iii) On the Sutlaj we have almost a general custom in favour of the proprietors. The precedents are numerous and almost unanimous in their favour; and they are generally supported in other villages by the admissions of the tenants themselves. Still, in cases of dispute the actual position of the particular tenant should be looked to. In some cases he is almost a sub-proprietor; in others his position is very weak, I doubt if we can say generally that maurúsís have or have not a right to these lands; but I think the presumption is rather in favour of the proprietors, and that it

will generally be for the maurúsís to show some particular cause for admitting their claim.

58. This enquiry into the rights of maurúsís completes the record of customary law for this Conclusion. district as compiled at the present settlement. As already stated, no legal presumption of correctness will attach to any of its entries ; it is only claimed for them that they may be admitted in evidence under section 32 of Act I of 1872, and taken for what they are worth. It may be said that many of the answers are worth but little ; and this is quite true if we look on them simply as evidence in support of a custom in the sense of a rule of action founded on an unbroken series of precedents. But, as observed by Mr. Lyall, even these answers are valuable as showing the state of feeling out of which custom grows. At any rate, they will show the courts what has been the scope of the present enquiry ; and even if they do not afford much evidence in themselves, they may still be of considerable use in indicating the direction in which further investigations may be profitably made.

C. A. ROE,  
*Settlement Officer.*

CAMP MOOLTAN ;  
The 7th October 1879.



# APPENDIX A.

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